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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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Transcript of Record.

(IN FOUR VOLUMES.)

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JOHN A. JESSON, E. R. PEOPLES, JAMES W.  
HILL, RAY BRUMBAUGH, R. C. WOOD  
and JOHN L. MCGINN,

Appellants,

vs.

F. G. NOYES, as Receiver of the WASHINGTON-  
ALASKA BANK, a Corporation, Organized  
Under the Laws of the State of Nevada,

Appellee.

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VOLUME III.

(Pages 641 to 960, Inclusive.)

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Upon Appeal from the United States District Court  
for the Territory of Alaska, Fourth Division.

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(Testimony of Sidney Stewart.)

Q. That was all subject to check, these deposits in the bank?     A. The deposits.

Q. Yes, in the outside banks like Wells Fargo and the Washington Trust Company.

A. It is supposed to be available credit, yes.

Q. Equivalent to cash.     A. I understand that.

Q. What is the total of that, Mr. Stewart?

A. \$1,733,287.68.

Q. Now, upon that date, what were the individual deposits, that is, commercial deposits other than the savings?     A. There was \$1,150,406.43.

Q. How much were the savings?

A. \$233,423.48. [563]

Q. What was the amount of the demand certificates?     A. \$159,325.02.

Q. Time certificates?     A. \$94,167.29.

Q. Cashier checks?     A. \$184.31.

Q. Certified checks?     A. \$2,752.98.

Q. Letters of credit?     A. \$8,900.

Q. Due Cleary Branch?     A. \$65,037.92.

Q. Due Dome Branch?     A. \$157,825.45.

Q. Does that show all the demands that existed against the bank upon that date? I am not talking about capital stock, undivided profit, or circulation of dividend.     A. Not the dividend account?

Q. No, not the dividend account.

A. I believe that takes them all.

Q. Can you tell me what that totals?

A. \$1,872,023.08.

Q. What liabilities, other than those, existed upon that date? Capital stock how much?

(Testimony of Sidney Stewart.)

A. Capial stock \$150,000.

Q. Undivided profits.how much? A. \$6,248.37.

Q. They were carrying that much undivided profits at that time?

A. That is in the undivided profit account \$6,248.37, part of their accumulated earnings.

Q. How much accumulated earnings?

A. The accumulated earnings, as shown from the account, is \$118,633.93. That is not deducting the other side.

Mr. RIDER.—Q. Is this \$6,000 of undivided profits included in that accumulated earnings?

A. Yes, sir.

Mr. McGINN.—Q. Just deduct the expense from that, and it will give us the amount of the undivided profits. [564] A. \$64,808.18.

Q. That is the net earnings upon that date?

A. That is the net earnings.

Q. Circulation? A. Circulation is \$94.

Q. That has reference to scrip, has it not?

A. Yes, sir.

Q. Then, dividend account? A. \$4,500.

Q. Do you know whether that dividend account is for a dividend that was declared upon the capital stock and put in the dividend account, and had never been paid to the party entitled to it or not?

A. There is on August 17, 1909, a debit to undivided profit of \$18,000, and a credit to dividend account.

Q. That is what it is; some dividend that had been declared?

(Testimony of Sidney Stewart.)

A. It appears to be, yes, sir. But I don't know anything about it without looking it up.

Q. Those are all of the liabilities that existed upon that date, aren't they? A. And the capital stock.

Q. You have the amount of the liabilities of that date, other than the capital stock, undivided profits, this circulation amounting to \$94, and the dividend; and I ask you to subtract that amount from the amount of cash and bullion and money on deposit elsewhere on that date, which I believe you stated amounted to \$1,733,287.68. A. Subtract what?

Q. Subtract that amount from the \$1,872,023.08.

A. \$138,735.40.

Q. So that upon the 13th day of September, 1909, the Washington-Alaska Bank of Washington had money and bullion, or what was [565] the equivalent of money deposited with these other banks, sufficient on hand to pay all of their liabilities, with the exception of capital stock, undivided profits, circulation, and this dividend account you have testified to, with the exception of \$138,735.20.

A. Yes, sir. There is one little item of \$84 that I left out. I just noticed it on the other side.

Q. That would make the undivided profit, then, \$64,723.30. A. Just that difference is all.

Q. Now, to satisfy this \$138,735.20 they had loans and discounts upon that date amounting to how much? A. \$258,545.35.

Q. They had stock and securities amounting to how much? A. \$59,875.

Q. Do you know whether or not that was the stock

(Testimony of Sidney Stewart.)  
of the First National Bank?

A. I believe that is the stock of the First National Bank. Yes, sir.

Q. They had their buildings and real estate, amounting to how much?

A. \$12,976.89, and assay outfit \$2,505.25, and furniture and fixtures, \$5,245.31.

Q. Then there is an item there of L. A. Wing, is there not, carried as an asset? A. Yes.

Q. How much is that? A. \$1,367.47.

Q. Do you know what that was for?

A. I do not.

Q. What does that aggregate or total?

A. \$340,515.27.

Q. To pay this balance of \$138,735.20 that was due to banks, [566] and to capital stock, and undivided profits, circulation and this dividend?

Q. Yes, sir.

**[Testimony of R. C. Wood, for Defendants.]**

R. C. WOOD, a witness for defendants, heretofore sworn, testified as follows, to wit:

Direct Examination.

By Mr. McGINN.—Q. What is your name?

A. R. C. Wood.

Q. You reside in Fairbanks, Alaska? A. I do.

Q. How long have you resided here?

A. Since April, 1903.

Q. What is your business at present?

A. I am president of the First National Bank.

Q. Are you acquainted with an institution that was known as the Fairbanks Banking Company?

(Testimony of R. C. Wood.)

A. I am; yes, sir.

Q. State whether or not you were one of the founders of that institution.     A. I was.

Q. You and Captain E. T. Barnette.

A. Captain Barnette and I organized it.

Q. Afterwards Mr. James W. Hill became a member of the institution with you. [567]

A. Yes, I think along in May, 1905? Mr. Hill became a partner with Captain Barnette and myself.

Q. And the copartnership of Barnette, Hill & Wood continued until the partnership sold out to the Fairbanks Banking Company, a corporation, on the 16th day of March, 1908.     A. It did, yes, sir.

Q. At the time of the organization of the Fairbanks Banking Company, where were you?

A. The incorporation?

Q. Yes.     A. I was in Seattle at that time.

Q. When had you left Fairbanks?

A. I think about the 13th or 17th of November, 1907.

Q. For what purpose did you leave here?

A. I went to arrange for a credit for the Fairbanks Banking Company; also to take out \$200,000 in gold bullion.

Q. Now, prior to the time that you left here, did you give Mr. James W. Hill a power of attorney, or in 1906 did you give him a power of attorney?

A. I gave Mr. Hill a power of attorney in 1906.

Q. What was the purpose of that?

A. Mr. Hill was going outside at that time, and

(Testimony of R. C. Wood.)

Mr. Causten was suing E. T. Barnette, and in the event of a reorganization of the partnership which might be necessitated by the Caustens suit, Mr. Hill would have my full power of attorney to act for me.

Q. In case he should organize a partnership out there?

A. Yes, sir, that was the purpose. I was at Seattle in December when the Fairbanks Banking Company suspended. I was notified by wire, and I immediately made plans for the organization of a bank in Seattle. I [568] talked the matter over with Mr. McCord and Mr. M. J. Cornell, and Mr. Cornell talked it over with Bachus of the National Bank of Commerce, and we concluded that we could organize a bank outside to take over the affairs of the Fairbanks Banking Company, a partnership. I worked on that proposition for some time, and notified the bank here that I was doing so. And I received a telegram from Mr. Hill or the Fairbanks Banking Company—I don't know who it was from—to the effect that there was some scheme on foot in Fairbanks to organize a miners' and merchants' bank and that they thought it would be a good idea for them to make some arrangements with these proposed incorporators to take over the Fairbanks Banking Company, a partnership, and wired me, and I told them to go ahead, and I then discontinued all further efforts for the organization of the bank that I was making outside.

Q. That is the organization that you speak of in these telegrams which were introduced in evidence.



(Testimony of R. C. Wood.)

A. Yes, sir. That is the organization.

Q. What more did you hear in regard to that matter about the organization of the bank here?

A. The matter went along for some time, and I was informed by telegram in a week or so—I was hearing constantly from the bank. I was transacting business for them out there—and they finally told me—in the first place they told me that a committee had been appointed by the depositors to take over the assets of the Fairbanks Banking Company for the protection of the depositors of the partnership, and later on a telegram came to the effect that plans were being made for the organization of this new bank. They telegraphed me that the stock had been oversubscribed, and that they had [569] issued us \$88,000 in stock; that the corporation had rejected certain assets that belonged to the partnership, and that plans were being made for the organization of the bank about February, 1908, and also asked me to endeavor or see what I could do towards getting credit for the new bank in the way of exchange for the purpose of drawing against it for the purpose of getting telegraphic orders and drafts.

Q. That is about all the information you received, is it, by telegram or by letter?

A. I think that is about all.

Q. You got that letter of Mr. Hill's that was dated the 8th day of February, didn't you?

A. Another thing that I will say: Sometime in the latter part of January I received a telegram to the effect that Mr. Hill was on his way to Seattle or to

(Testimony of R. C. Wood.)

Valdez, and for me to go to Valdez and meet him and talk over the organization of this bank. I left for Valdez and met Mr. Hill there sometime the latter part of January, or first part of February—I don't remember exactly when it was. I know the boat I came on was leaving in a day or two, and the stage was leaving that morning or that afternoon—I forget whether it was that morning or in the afternoon—but I rode out to Wortman's with Mr. Hill and stayed all night with Hill at Wortman's, and during that time and out there we talked over the organization of the bank. There were certain things I didn't like, and I told Mr. Hill that unless Barnette agreed to certain demands or propositions I made that I would go ahead with the organization, and for him to telegraph him to that effect. And I went [570] outside, and Mr. Hill proceeded to Fairbanks. I went back to Seattle, and after I had been in Seattle some little time, around the latter part of February, I received a telegram from Mr. Hill from Fairbanks to the effect that Barnette would not agree to the proposition I made. Then I sat down and wrote him this letter of February 29, 1908, to the effect that if I had any stock in the bank I wanted him to sell it.

Q. The letter that was introduced in evidence?

A. Yes, sir. I told him in that letter that I wasn't going to have anything more to do with the Fairbanks Banking Company. I intended, upon my return to Fairbanks, to start a brokerage office, and I expected to act as cashier of the bank until I was discharged—until I had an opportunity to resign.



(Testimony of R. C. Wood.)

The bank paid my expenses outside that winter, and I felt duty bound to act as cashier for them.

Q. What acts did you do out there as cashier of the Fairbanks Banking Company?

A. Well, there were quite a number of things to do. My main purpose was trying to raise a credit for the Fairbanks Banking Company which they could draw drafts and telegraphic exchange against.

Q. Seattle and San Francisco were all upon a scrip basis?

A. All upon a scrip basis at that time and before I returned to Fairbanks. I did succeed in raising a credit with Dexter Horton of \$175,000 or \$250,000, and I got \$75,000 in currency and sent it by registered mail to Fairbanks at that time. Then I came back to Fairbanks, and at the first meeting of the board—(interrupted). [571]

Q. When did you arrive here?

A. I arrived about the 12th or 13th of April. I couldn't tell exactly. I think they state the 17th, and I looked up records here to find—(interrupted).

Q. That was in 1908            A. In 1908.

Q. Then, what did you do in connection with the Fairbanks Banking Company?

A. Well, at the first meeting of the board of directors of the bank, I resigned—put in my resignation.

Q. Have you got that letter of resignation?

A. I think that is on file in the secretary's files of the Fairbanks Banking Company.

Q. Do you remember about what date that was?

A. That was May 12, 1908. That was the first

(Testimony of R. C. Wood.)

meeting of the board of directors after I reached here.

Q. Was that accepted by them?

A. No, it was not. They held that meeting in the evening. I was not a director of the bank, and I didn't attend that meeting. Mr. Robinson later on came down to my house in the evening, and asked me if I wouldn't reconsider from the fact that the bank was on a scrip basis, and he thought it would be better, and the directors would feel better about it, if I would remain until the bank was on a basis to pay cash. I told him I would stay until I could exercise an option I thought I had on stock of the Fairbanks Banking Company that fell due the 1st of July, that I would stay until that time.

Q. How long did you stay?

A. I stayed until the 29th day of June, 1908.

Q. State whether or not you handed in your resignation upon that date? [572]

A. I handed in my resignation at that time and ceased my duties as cashier or any other duties in connection with any other bank, and from that time on I discontinued all my relations with the Fairbanks Banking Company.

Q. Have you got a copy of your letter of resignation that you put in at that time? A. Yes, sir.

Mr. MCGINN.—Q. You resigned upon the 29th day of June, 1908?

A. I resigned upon June 29, 1908.

Q. Did you perform any duties as cashier of that bank on the 30th day of June, 1908?

(Testimony of R. C. Wood.)

A. No, sir, I didn't. At the time I sent my resignation in, I requested them to pay me \$13,000 surplus.

Q. \$13,000 surplus?

A. Surplus that I had when the corporation took over the assets of the partnership; also pay me \$10,000 for my portion of the accrued interest.

Q. I am not at that yet. Now, when you arrived here in April, about the 13th or 14th—whenever it was—what did you do in the way of signing any papers transferring any property to the Fairbanks Banking Company, a corporation?

A. The corporation had been doing business since the 16th day of March, 1908. I arrived here, as I say, about the 12th or 13th of April, and shortly after my arrival they had a meeting of the executive committee and they asked me [573] to sign a transfer of the assets of the partnership to the corporation. I read the agreement over, and there was a clause in it to the effect that I should be paid in stock for my interest in the surplus of these assets. I told them that I wouldn't sign it.

Mr. RIDER.—That is objected to as incompetent; an attempt by parol testimony to vary the terms of a written agreement.

Mr. McGINN.—They are strangers to this agreement, not parties to it, and they can't object to it.

Mr. RIDER.—In what way is the receiver a stranger to the agreement?

Mr. McGINN.—The receiver is not here representing the corporation, or the bank, or the stock-

(Testimony of R. C. Wood.)

holders at this time. He is here simply representing the creditors, and as such is a stranger to the transaction. (Argument.)

The COURT.—He may answer, subject to the objection.

A. I refused to sign the agreement. I told them I had been allowed to accept \$13,000 due me in cash and that I did not intend to take any stock in the corporation. They told me that that had been provided for, and that I would be paid the \$13,000 cash on the 1st of July, 1908. And I asked them how I would be certain of this, and they showed me the minutes of the proposed stockholders, and also the minutes of the board of directors. And they paid me the money, so I had no reason to doubt it.

Q. I call your attention to the minutes of the first meeting of the board of directors held at Fairbanks, Alaska, on the 12th day of March, 1908, which has been marked as Plaintiff's Exhibit "E," and ask you to examine paragraph 22 thereof, or that portion thereof that they showed to you at that time in reference to your right to money instead [574] of stock. (Hands same to witness.)

A. Yes, sir. They showed me that.

Q. What part of it?

A. (Reads.) "That should James W. Hill and R. C. Wood not take the full \$44,000.00 in stock in the new corporation the balance of the amount not so taken to be paid to them not later than July 1, 1908."

The COURT.—Q. Who showed you that?

A. The executive committee.

(Testimony of R. C. Wood.)

Mr. McGINN.—Q. I believe you said that they assured you at that time that that would protect you.

A. Yes, sir.

Q. I will ask you to state whether or not upon that assurance you signed the contract that is in evidence here marked Plaintiff's Exhibit "C"?

A. I certainly did, and they all knew that I was going to leave the bank.

Q. Now, what was said at that time in regard to making out a new contract or agreement in case you would not sign?

Mr. RIDER.—We object as irrelevant, incompetent and immaterial.

The COURT.—The same ruling; received, subject to the objection.

A. They told me that the corporation had been doing business upon that agreement for almost a month, and that it would cause a great deal of inconvenience and probably trouble; that this had been filed, and transfers of property made upon that agreement. And they paid me the money shortly after.

Q. Did you ever receive any stock?

A. No, sir. I did not.

Q. Was any stock ever tendered to you?

A. No, sir. It was not. [575]

Q. How long did you continue to act as cashier?

A. Up to the 29th of June.

Q. Then what was done in regard to this stock?

A. Well, I don't know.

(Testimony of R. C. Wood.)

Q. What was done in regard to the bank paying you any money?

A. On the 30th day of June, I think, or the 1st of July, they gave me a check for my surplus \$13,000. I wouldn't say that they gave me the check; whether they placed it to my credit or gave me a check for it.

Q. Anyway, you got the money at that time?

A. I got the money at that time.

Q. Then you severed all connection with the bank?

A. I did.

Q. That is on the 29th day of June?      A. Yes, sir.

Q. Then what did you do?

A. Then I opened up a brokerage office; real estate and brokerage.

Q. In Fairbanks here?      A. In Fairbanks.

Q. How long did you continue in the brokerage business?      A. I continued until May, 1909.

Q. What did you do then?

A. Sometime during the early part of May, 1909, Captain Barnette and Mr. Parsons came over to my office and told me that— [576]

Q. Do you remember the time that the Fairbanks Banking Company purchased the stock of the Washington-Alaska Bank?      A. Yes, sir. I do.

Q. That was in September, 1909?

A. In September, 1909.

Q. Did you have anything to do with that?

A. I had nothing to do with the purchase of the bank. After the bank was purchased, I was ap-



(Testimony of R. C. Wood.)

pointed advisory manager of the three institutions.

Q. What were you to receive for that?

A. I received \$50 from the Washington-Alaska Bank, and \$50 a month from the Fairbanks Banking Company.

Q. And you still performed your duties as cashier of the First National Bank?

A. Yes, sir; I devoted all my time to the First National Bank, with the exception of the evenings, when I would meet [577] the cashiers of the two institutions and go over the business at that time.

Q. When were you to assume the position of advisory manager of the Fairbanks Banking Company?

A. When Mr. Dusenbury should leave Fairbanks.

Q. When was it expected, when that resolution was passed, that Dusenbury would leave?

A. He was not to go until the first of November, 1909, but he left ten days or two weeks earlier.

Q. About the 19th of October, wasn't it?

A. I wouldn't be sure. It was around there some place.

Q. The minutes show he severed his connection with the Fairbanks Banking Company upon October 12th. Up to that time, did you know anything very much about the affairs of the Fairbanks Banking Company?

A. No, sir; not a thing. I never had seen a statement of theirs except what was published, and I had never seen any documents connected with their business at all.

(Testimony of R. C. Wood.)

Q. When did you first become acquainted, or get to be acquainted and know about the condition of the loans and discounts of the Fairbanks Banking Company and the Washington-Alaska Bank?

A. It was some time after Mr. Dusenbury left.

Q. That is, as to the Fairbanks Banking Company?

A. As to the Fairbanks Banking Company. Mr. Jackson and I one evening went over—He one night brought a list of the loans and discounts to me at that time, and later on we went over the securities together.

Q. Who was in charge then of the Washington-Alaska Bank?      A. Mr. Wesch.

Q. State whether or not you did the same thing with him? [578]      A. Yes.

Q. I will ask you to state whether or not from the notes and the securities you made a record of the notes and securities, loans and discounts that were then held by the two banks.

A. Yes, sir, I did. I made a record for the purpose of —

Q. I show you this book (producing book) which has marked upon it “399.” State whether or not that is the record you prepared.

A. Yes, sir. That is it.

Q. Of the loans and securities?      A. Yes, sir.

Q. Up to what time does that show the securities of the Fairbanks Banking Company and the Washington-Alaska Bank?



(Testimony of R. C. Wood.)

A. I kept this up until the time I resigned from the Washington-Alaska Bank and Fairbanks Banking Company.

Q. That was about the first of May, 1910?

A. The first part of May, 1910.

Q. State whether or not up to that time it shows all of the loans and securities given to secure those loans.

A. The intention was to show all of the loans that existed of the Fairbanks Banking Company and Washington-Alaska Bank that were live assets of the banks. I don't think it included the loans that had been previously charged off by either bank. I made out the sheets headed "F. B. Co." and W-A, meaning that the notes following the heading under "F. B. Co." would be the notes of the Fairbanks Banking Company, and those following under the heading "W-A" would be the notes of the Washington-Alaska Bank. In it I endeavored to state what those notes were secured by, and as much information as possible concerning each of the different loans of the two banks; and, when I severed my connection with the [579] Banks, I delivered this to the Fairbanks Banking Company to the cashier, Mr. Jackson, at that time.

Q. When did you next see the book?

A. The next I saw of it was the other day since these cases started.

Q. I found it there in the vault. I remembered the book very well, and I thought it would be of

(Testimony of R. C. Wood.)

some assistance to eliminate a good *deal* trouble, if it could be located. I didn't know that it could be found, but I found it there.

Q. Now, what is the fiscal year of the Washington-Alaska Bank and the Fairbanks Banking Company, as far as you know?

A. The fiscal year of the Fairbanks Banking Company, a partnership, and the Fairbanks Banking Company, a corporation, was December 31st, and the same with the Washington-Alaska Bank.

Q. Now, state what you did in the latter part of the month of December, 1909, in going over the loans and discounts and securities of the Washington-Alaska Bank to determine what loans were good and what were bad?

A. Prior to the closing of the books of the Washington-Alaska Bank and the Fairbanks Banking Company, I requested that Mr. Wesch, who was cashier of the Washington-Alaska Bank, and Mr. Jackson, who was cashier of the Fairbanks Banking Company, submit a list of all the loans, in both of the institutions that they considered bad. They did this, and we went over the lists together, and we concluded that that was all of the bad debts that existed at that present time, and charged them off.

Q. That existed at that time, December 31, 1909?

A. Yes, sir, at that time. While there might have been some debts that were unsatisfactory they were secured, and were to be adjusted or liquidated later.

(Testimony of R. C. Wood.)

A. In some instances, yes, and in some instances more than sufficient. In some instances more, and in some instances less. We considered that the security existing on the loans upon which we would be able to realize more than the notes, would offset those upon which we could not realize the full amount.

Q. State whether or not you charged off all loans and discounts which you considered bad.

A. We did. We went through the thing thoroughly.

Q. That applies to both banks?

A. That applies to both banks; the Fairbanks Banking Company and the Washington-Alaska Bank.

Q. Were statements made out showing the condition of the banks at that time?

A. Yes, sir. They were.

Q. As of December 31, 1909?

A. Yes, sir. I have a copy of them.

Q. Have you copies of those statements there?

A. Yes.

(Papers handed to Mr. McGinn by witness.)

Q. What did it show the surplus and undivided profits of the Washington-Alaska Bank of Washington was upon the 31st day of December, 1909?

A. Before charging the bad debts off, or after?

Q. After charging off the bad debts.

A. The undivided profits of the Washington-Alaska Bank were \$56,106.97.

Q. What amount of bad debts did you wipe off?

(Testimony of R. C. Wood.)

A. We wiped off \$8,599.59.

Q. As to the Fairbanks Banking Company, what was the surplus and undivided profits for the year ending December 31, 1909, after charging off the bad debts? [581]

A. \$9,881.78.

Q. What amount of bad debts did you charge off at that time?

A. We charged off \$23,514.39; and there was one previous charge to bad debt account of \$1,422.98; that was during the year 1909.

Q. Now, Mr. Wood, you are acquainted with Mr. Jackson pretty well? A. Yes, sir.

Q. How long had you known him?

A. I think ever since 1904 or 1905.

Q. He is a man of considerable banking experience, and was, wasn't he?

A. Yes, sir. He was cashier for the old Boston National Bank of Seattle at one time,—Mr. Chapin's bank,—which bank afterwards consolidated with the Seattle National Bank and is now known as the Seattle National Bank. He was not cashier; he was acting cashier when the Boston National Bank was in its infancy.

Q. During the time he was in Fairbanks, what was he principally engaged in?

A. I think when he first came here he went mining. Then he afterwards I think was in charge of a branch bank at Chena of the Washington-Alaska Bank.

(Testimony of R. C. Wood.)

Then afterwards he was employed by the Fairbanks Banking Company.

Q. Do you know when he went to work for the Fairbanks Banking Company?

A. I don't remember exactly. I don't remember whether it was before or after the time they reorganized.

Q. It was somewhere around 1907 or 1908?

A. Somewhere around there.

Q. He continued with the bank until it closed its doors?

A. He did as far as I know. He was outside when the bank [582] closed its doors.

Q. What kind of a man was he as to being careful and conservative?

A. He was a capable and careful fellow, and had the confidence of the community, of everybody in the community. He had held responsible positions. At one time he was with the N. A. T. Company. He was a man of good standing.

Q. State whether or not in your opinion you regarded him as a good banker? A. Yes, sir.

Q. State whether or not in your opinion he was acquainted with the standing and credit of the people in this community.

Mr. RIDER.—What is the purpose of this?

A. He most certainly was.

Mr. McGINN.—I want to show that the board of directors, in selecting Mr. Jackson to occupy this position, used care in selecting a good man.

(Testimony of R. C. Wood.)

Mr. RIDER.—There is no charge against him.

Mr. McGINN.—If that is admitted—

Mr. RIDER.—It is not admitted. It is not in issue.

The COURT. He has testified he was a competent man.

Mr. McGINN.—Q. You say you went over these loans and discounts with him.

A. I did. Yes, sir.

Q. And considered them carefully. A. Yes, sir.

Q. Now, you know Mr. Wesch? A. Yes, sir.

Q. He had been connected with the Washington-Alaska Bank for some time?

A. Yes, almost since it started. [583]

Q. He was in charge of the Washington-Alaska Bank that winter, was he? A. Yes, sir. He was.

Q. I will ask you to state whether or not in your opinion you regarded him as a competent and able banker? A. I certainly do.

Q. A man of good standing? A. Yes, sir.

Q. And good judgment?

A. Yes, sir. He was recommended very highly by Mr. Parsons at the time.

Q. You went over the affairs of that bank carefully with him?

A. I did. Understand that in going over the affairs of the banks, I was never in the Washington-Alaska Bank or the Fairbanks Banking Company at that time; it was all submitted to me by reports.

Q. He was also in charge of the bank of Mr.



(Testimony of R. C. Wood.)

Hurley down in the Iditarod?

A. He was, I believe, yes, sir.

Q. Mr. Wood, I believe you testified yesterday that after Mr. Dusenbury left here, you went over the loans and discounts of the Fairbanks Banking Company, also of the Washington-Alaska Bank, and made an inventory of the securities that were given to secure the loans and discounts of the Fairbanks Banking Company and the Washington-Alaska Bank. A. Yes, sir. [584]

Q. And where is that inventory or record?

A. It is the book I referred to last night.

Q. That is numbered 399? A. Yes.

Q. Now, I would ask you to refer to that book and state what that shows the notes of J. A. York were secured by at that time?

Mr. RIDER.—Before the question is answered, I would like to ask a preliminary question.

Mr. McGINN.—We have no objection.

Mr. RIDER.—Q. That book that your attention is called to, was that prepared by yourself?

A. Yes, sir.

Q. For your information as manager?

A. For my information as manager.

Q. And kept by you as manager?—

A. Yes, sir.

Q. Of the three banks? A. Yes.

Q. But not kept as a part of the Fairbanks Banking Company's books?

(Testimony of R. C. Wood.)

A. It was afterwards turned over to the Fairbanks Banking Company.

Q. But at the time it was made and originally prepared, it was kept by you as manager.

A. Yes, sir.

Q. And kept in the office of the First National Bank.     A. No, sir.

Q. Where was it kept?

A. It was kept where we had a general office.

Q. Where was your office?

A. Over the Barnette Building.

Q. It was not the same place where the Fairbanks Banking [585] Company had its place of business.

A. It was not kept there then, but it was afterwards, in May, turned over to them.

Q. It was prepared as a part of your private memoranda as manager.

A. It was prepared for the purpose of having ready reference to all the securities of the two institutions.

Q. For ready reference by you as manager.

A. For ready reference by anyone else that wanted to go through it.

Mr. RIDER.—I object to the use of the book for the reason that it is incompetent, being merely copies of memoranda kept by the witness himself of which there has not been shown inability to produce the original instruments themselves, or the regular record thereof; for the further reason that it is



(Testimony of R. C. Wood.)

irrelevant and immaterial.

The COURT.—It does not appear to be one of the regular books of the bank, but I think he may refer to it for the purpose of refreshing his memory.

Mr. RIDER.—Let me ask him one further question: Q. Did not the Fairbanks Banking Company keep a record of its own as to the securities?

A. Yes. I think they did.

Q. Have you not that record there kept by the Fairbanks Banking Company amongst those books there on that table?

A. This is of mortgages as securities (Indicating book). Then I think they had a stock ledger, too. I think this only keeps a record of the mortgages. While it was the intention of this book to keep a record of whatever securities there might be.

The COURT.—I think he may refer to it. It is more convenient, probably. [586]

A. The sheets seem to be out of order. The only memorandum of York is: "Note No., 216 for \$100, No., 260 for \$500, No., 1835 for \$100, and No., 2963 for \$20. See Timmerman." At that time the Fairbanks Banking Company had the possession of Government warrants—

Mr. McGINN.—Q. Does it show the amount of those warrants?

A. No, this book doesn't. This book doesn't mention anything about those warrants, but they had them in their possession.

Q. What do you know about the York matter?

(Testimony of R. C. Wood.)

A. Do you want the history of that York matter?

Q. Yes, sir.

Mr. RIDER.—We object as irrelevant, incompetent and immaterial.

Mr. MCGINN.—Refer to the Timmerman note of \$105.

A. Number 358 made May 17, 1905, for the sum of \$105, due on demand, signed by C. Timmerman, secured by order on J. A. York.

Q. State whether or not these Government warrants that were in the possession of the Fairbanks Banking Company at that time were also security for that Timmerman note of \$105.

A. Yes, sir, it was always considered that way.

Q. Mr. York had a mail contract here in 1904, did he not?

A. He had a mail contract from Circle to Fairbanks in 1904. The bank made him advances for carrying on the expenses of his trips from Circle to Fairbanks, and he gave a power of attorney to Mr. Hill for the purpose of collecting on those warrants, and I believe notified the department at Washington to send the warrants to myself or Mr. Hill.

Mr. RIDER.—I object to that.

Mr. MCGINN.—The bank received the warrants.  
[587]

A. The bank received the warrants and had them in its possession, to the amount of, I think, approximately \$3300.00.

Q. They were held by the bank as security for these notes?      A. Yes.

(Testimony of R. C. Wood.)

Q. And were subsequently paid?

A. So I believe.

Q. Where is the note of William Casey and Saler for \$40? Well, I guess there is no controversy about that being a good note, so I will pass that.

Mr. RIDER.—We don't admit that that is a good note or a collectible note, and never have.

Mr. McGINN.—Q. You know William Casey?

A. Yes.

Q. He runs the Northern Hotel here?

A. Yes.

Q. He was good for the sum of \$40 in 1908 and 1910, was he? A. Yes, sir.

Mr. RIDER.—That is not disputed, but we don't admit that that note is a good note or that it is collectible.

Mr. McGINN.—Q. That note was collectible at that time? A. It was. Yes, sir.

Q. I ask you to refer to the Morencey-Himes notes 675, 3056 and 3178, and state what security you had for that.

A. Secured by mortgage on 1/11 interest in 1 above Little Eldorado, 1/4 interest Discovery bench, right limit, first tier, Little Eldorado. Mortgage 1/2 interest lower 720 feet of 6 above on Fairbanks Creek, subject to first mortgage.

Q. What does that mean: "Subject to first mortgage"?

A. That was a mortgage that the Washington-Alaska Bank held on the property at that time. It

(Testimony of R. C. Wood.)

says: "Subject to first mortgage Washington-Alaska Bank."

Q. Do you know what property, if any, William Himes owned at [588] that time?

A. William Himes owned some property on Birch Creek. A 1/8 interest in number 12 below, Fairbanks Creek.

Mr. RIDER.—At what time?

Mr. MCGINN.—In 1910, or at the time that he made these out. That was about when, Mr. Wood, November, 1909?

A. These were started, I think, about December, 1909, and continued until about the 1st of May, 1910.

Q. The entries were made in that record then?

A. Yes.

Q. Does that show what the full amount of those notes was originally?

A. No, it doesn't. This is the balance that was taken from the statement prepared by the different banks. The book was made from statements prepared by the different banks.

Q. What does that show was due?

A. It shows due on number 675 \$435.

Q. Who signed that note?

A. I have it Morencey as maker.

Q. Was Himes on that note?

A. I don't know. These records don't show.

Mr. RIDER.—That Morencey matter was put in judgment before the bank closed. The bank disposed of it. We had nothing to do with it. Number 1301 is the case.

(Testimony of R. C. Wood.)

Mr. McGINN.—That was Ensor and Griffith. The amount of the note was \$435.

Q. Are you acquainted with these properties, or were you acquainted with them on 1910—the properties you have read? A. Yes.

Q. I will ask you to state whether or not in your opinion they were ample security for the sum of \$435? A. They certainly were. [589]

Q. Now, you stated that at that time William Himes owned a  $\frac{1}{8}$  interest in 12 below, Fairbanks Creek. A. Yes, sir.

Q. Can you tell me what became of that interest?

A. He afterwards sold that interest in 1911 to Chesley, Ryan & Kehoe.

Q. That was when?

A. That was in 1911 or 1912, I don't remember which.

Q. Do you know what amount of money they realized, that is, made out of that  $\frac{1}{8}$  interest?

A. To the best of my recollection— (Interrupted).

The COURT.—Q. Who made out of it?

A. Chesley, Ryan & Kehoe.

Mr. RIDER.—We object to that as irrelevant, incompetent and immaterial, and for the further reason that there has been no evidence to show that Himes had any interest in that property.

The COURT.—If there is any dispute about that, I think you had better produce the records and show what the condition of affairs is.

(Argument. Objection overruled.)

A. I handled the gold-dust that came out of that

(Testimony of R. C. Wood.)

property, and I think Himes interest amounted to from \$1000 to \$1500. I don't remember exactly.

Mr. McGINN.—Q. Was that worked on a lay?

A. Yes, sir. Freeman & Larson worked that property on a lay.

Q. In April, 1910, did you believe at that time that the securities that you have enumerated here covering and securing these notes that you have read of Morencey and Himes was sufficient to meet those obligation?

Mr. RIDER.—So that I will not have to interrupt the proceedings [590] further with objections, I will make one objection, and, if the Court decides to receive the testimony, I ask that it be received subject to the objection: That is, that this testimony respecting the value of these securities and the value of these notes, in the opinion of the witness at the time referred to, is irrelevant, incompetent and immaterial.

The COURT.—You may answer, subject to the objections.

A. I believed it was good at that time.

Mr. McGINN.—Q. I will ask you to *believe* whether Mr. Jackson, who was then cashier or vice-president—which was he, cashier or vice-president?

A. I don't remember that he was vice-president. He was cashier, I know that.

Q. I will ask you to state whether or not in his opinion it was regarded as a good loan.

(Objected to as irrelevant and immaterial. Sustained.)



(Testimony of R. C. Wood.)

Mr. McGINN.—I offer to show that if the witness were permitted to answer the question that he would state that Mr. Jackson concurred in his opinion in regard to the sufficiency of this security.

Q. E. D. Howell, notes number 1174, 1274 and 601.

A. Mortgage on undivided  $1\frac{1}{2}$  interest in the lower 700 feet of the Tabby Association on Treasure Creek.

Q. Do you know Howell?

A. It says: "Howell is working for Joe Egler at Hot Springs."

Q. You know Mr. Howell himself in the Hot Springs country at present?     A. Yes, sir.

Q. Do you know anything about this Tabby Association on Treasure Creek?

A. No. I do not. [591]

Q. D. H. Berger and Charles W. Kellogg, numbers 1587 and 2022. What security was there for those?

A. Number 1587 for \$557, signed D. H. Berger. I find: Mortgage on undivided  $1\frac{1}{4}$  interest 1 above, first tier, left limit, Engineer.

Q. How about the Kellogg note?

A. Mortgage on undivided 1.4 interest 1 above, first tier, left limit, Engineer. Shall I read all memorandums that are in here in relation to these?

Q. Yes.

A. In that Berger matter it says: This property afterwards sold to Carter Harlow who has left country. All the ground operated winter of 1909-10. The same thing refers to the Kellogg—the same property.

Q. The Kellogg?

(Testimony of R. C. Wood.)

A. Note number 2022, made by Charles W. Kellogg. Mortgage on undivided  $\frac{1}{4}$  interest, 1 above, first tier, left limit, Engineer. Assessment work for 1910 done by the laymen.

Q. There was a lay on that property?

A. A lay on that property in 1909-10.

Q. Prior to the time you made out that—(Interrupted).

A. I presume that the lay was let during that winter.

Q. I refer you to notes 1861 and 1688 being notes of Fairburn, Kerler and Verboone.

A. Fairburn, Kerler & Verboone, number 1688 for \$1032; 1861 for \$300, 3083 for \$346. Bill of sale machinery; sold for \$700, \$300 cash, balance due June 1, 1907. Also attachment of \$300 of Kerler's with W-A.

Q. What was the amounts there due?

A. 1688 \$1032, 1861 \$300, and 3083 \$344. [592]

Q. That is not in the list, so I suppose that has been paid, that 3083. Do you know whether or not Fairburn owned any other property at that time?

A. I know that Fairburn owned property on Gold King Creek in the Bonnifield country.

Q. Do you know whether that was a producing claim or not?

A. I know that it produced in either 1908 or 1909. He worked during the summer over there, but I am not certain as to what year it was.

Q. I will ask you to state whether or not you considered that a good loan at that time. A. I did.



(Testimony of R. C. Wood.)

Q. D. W. Truitt, note number 1583.

A. 1583 was secured by mortgage on an undivided  $\frac{3}{4}$  interest in Number 8 above on Dome Creek, also a 25 horse power boiler, etc.

Q. Where was that located?

A. That was located—it doesn't say, but the boiler was located and the plant was on 8 above, I think. It was operating at that time.

Q. What was the amount of that? A. \$1000.

Q. What do you know about 8 above on Dome?

A. Well, I don't know very much about it.

Q. That was ample security for this loan of \$1000?

A. I certainly thought it was at that time. A 25 horse-power boiler at that time would be worth more than \$1000. You couldn't purchase it for that.

Q. Alex Larson, note number 1832.

A. Alex Larson, number 1832 for \$354.35. [593]

Q. What was the amount of that note originally?

A. I don't remember particularly.

Q. State whether it was the sum of \$3500.

A. It was in that neighborhood.

Q. Where was he operating then?

A. He was operating on Tenderfoot.

Q. Where has he been for the last four or five years? A. He has been in Fairbanks.

Q. What is his business now?

A. He is a partner in Anderson Brothers & Nerland.

Q. I will ask you to state whether that note is good to-day for the sum of \$354?

A. I think it is. I know no reason why it is not.

(Testimony of R. C. Wood.)

Q. Referring to number 1832, you believed it to be good in 1910?

A. Yes, sir. Although this record doesn't show it, there was a guaranty by a man named Koch.

Q. That was a written guaranty?

A. A written guaranty.

Q. Who was Mr. Koch?

A. Mr. Koch was a capitalist. He was in Fairbanks in early days, and was worth over \$100,000. I know this, because he offered Ronan & Matheson that much money for 12 below on Cleary Creek.

Q. And you know he guaranteed this?

A. Yes. I know he kept a large balance with the Fairbanks Banking Company at that time.

Q. Referring to 1548, note of William James on which there is a balance now of \$311, or was on April 12, 1910, a balance of \$311.97, I will ask you what that was secured by?

A. Number 1548 at that time it was \$508.42. Mortgage on [594] James Fraction between 7 and 8 below, also number 8 bench first tier, right limit, also number 4 bench first tier, left limit, on Fairbanks Creek.

Q. Do you know what the amount of that note originally was? A. It was over \$5,000.

Q. Do you know this property?

A. Well, I have been on the property, and I know it is a producing property, has been for some years.

Q. I will ask you to state whether or not that property is worth the sum of \$354.35.

A. I would like to buy it for that to-day.

(Testimony of R. C. Wood.)

Q. There was a lot of money produced from those properties?

A. Yes, sir. Conservatively they produced \$75,000. That is a very conservative estimate.

Q. That mortgage was never satisfied to your knowledge? A. Not that I know of.

Q. Note 1993, Emily Waters \$40— In regard to this James note, you believed it was amply secured to the extent of \$508.42? A. Yes, sir.

Q. On the 12th day of April, 1910?

A. It certainly was. Number 1993, \$40. Emily A. Waters. Secured by jewelry.

Q. I will ask you to state whether or not in April, 1910, you believe that jewelry was sufficient security for that loan.

A. I never saw the jewelry, but I believe Mr. Jackson considered it worth that at that time.

Q. I refer you to 1591, note of Gelding & Bechtol, and ask you what security there was for that note in April, 1910?

A. Secured by mortgage and deed of the Bechtol Fraction No. 6 above, right limit, Fairbanks Creek; also 1 above on Tenderfoot. [595]

Q. What do you know about the Bechtol Fraction, 6 above, right limit, Fairbanks Creek?

A. I don't know very much about it.

Q. What did you know about 1 above Tenderfoot Creek?

A. 1 above Tenderfoot was a producing claim. Hans Stark and Paul Fisher had, I believe, the adjoining property to it, for which they paid the Fair-

(Testimony of R. C. Wood.)

banks Banking Company, I think, \$10,000.00 for the property or for a mortgage that the bank held at that time on the property. They afterwards, I think, produced over \$75,000 on that adjoining property.

Q. I will ask you to state whether or not in April, 1910, you considered this property as sufficient security for the payment of that note.

A. Yes, sir. I did.

Q. Now, these securities were given at the time the loan was made, were they not?

A. The mortgages were given at the time the loans were made, but I think the deeds were afterwards taken.

Q. What does that show; that there were deeds taken?

A. It shows security by mortgage and deed. I think the mortgage was first given, and afterwards they deeded the property to the bank.

Q. Blodgett & Shepard, \$1700, note number 2384.

A. I don't think there was any security for that note, as far as I remember, at that time.

Q. You knew Bob Shepard, did you not?

A. I did.

Q. He had lived in this community how long?

A. Since 1904, I believe.

Q. Where had he been operating? [596]

A. He was operating on Discovery on Fairbanks Creek and on Goldstream.

Q. Who was he operating with?

A. With his brother, and a man by the name of

(Testimony of R. C. Wood.)

McBride. They also operated on 3 below on Fairbanks Creek.

Q. I will ask you whether he was a man of substantial means?     A. Shepard?

Q. Yes.

A. Yes. He was considered a wealthy man. Shepard Brothers were considered wealthy at that time.

Q. Do you know his present whereabouts?

A. No, I do not. In regard to that note, Mr. Stewart says there is \$1,636 that is to the credit of the Shepard Brothers on the books of the Fairbanks Banking Company, so it is evident—(Interrupted).

Mr. RIDER.—We don't care for any argument.

Mr. McGINN.—You regard that note as absolutely good at that time?     A. Absolutely.

Q. And good today?     A. I do.

Q. The next is number 2417, L. E. Wing \$150.

A. That is simply a note. I don't think there was any security for that note.

Q. Mr. Wing was assistant cashier at that time of the Fairbanks Banking Company?     A. Yes, sir.

Q. In the summer of 1910?     A. Yes, sir.

Q. What salary was he getting?

A. He was getting \$300 a month.

Q. And he continued with the Fairbanks Banking Company up until the time they closed their doors?  
[597]

A. I believe he did.

Q. That note could have been collected at any time?     A. Yes, sir.

(Testimony of R. C. Wood.)

Q. You considered that good upon the 12th day of April, 1910?

A. Yes. Now, my recollection is that there was some dispute about that note at that time; that Wing had said that Barnette would settle that. Barnette had agreed to pay some portion of his expenses, and the reason that that was not paid at that time, or during the winter, was waiting for Barnette to return; he was outside; and, if Barnette didn't pay it, Wing would pay it.

Q. It was between the two of them.

A. One of them would pay it. Yes.

Q. The next is Abe Spring, vote number 2614, at that time \$812.30. This shows that there is \$631.13 now due. What was that secured by, if you know?

A. I have it listed as \$812.30, secured by 10 shares of Fairbanks Banking Company stock.

Q. Mr. Spring had paid for his stock in full?

A. Well, I don't know.

Q. That was secured by 10 shares of stock of the Fairbanks Banking Company. A. Yes, sir.

Q. Now, I will refer you to the note of Axel Erickson, number 2664. What security was there for that note? And Erickson & Johnson 2774.

A. Well, the way I have those listed is; Number 2664, \$1400 dated January 29, 1909; Erickson & Johnson No. 2774 for \$2,000, May 12, 1909, and No. 3074 for \$30; secured by mortgage on the  $\frac{1}{3}$  interest in the lower  $\frac{1}{4}$  of 5 above [598] first tier, right limit, Little Eldorado; also 2 boilers, hoist and wood.

Q. You have then 2664, 2774 and 3076.



(Testimony of R. C. Wood.)

A. Yes, sir.

Q. I will ask you to state whether or not in your opinion in April, 1910, these securities were considered by you as sufficient to insure payment of these notes. A. I considered them so. Yes.

Q. Do you know what the size of those plants were?

A. Well, this book doesn't say. I can get the size by referring to the mortgages, and get the description of all the plants.

Q. The next note is the note of Joseph Sala for \$500.

A. Under date April 15, 1909, number 2848, for \$500.

Q. Was that secured?

A. It doesn't say so here.

Q. Where was Sala interested at that time, do you know?

A. Sala has always been a more or less prominent mining operator in this district. He has operated on Treasure Creek and Vault Creek for a number of years, and he was a partner of Joe Conta's at one time and made a great deal of money.

Q. I will ask you to state whether or not you considered that note good in April, 1910?

A. I did. Yes, sir.

Q. I will ask you to state whether or not you know of Mr. Sala buying property here in town recently.

A. He has.

Q. What property did he buy?

A. He bought a store building on 4th Avenue and

(Testimony of R. C. Wood.)

Barnette St. He bought what they called "Johnnie the Harp's" store.

Q. Do you know what he paid for it? [599]

A. No, sir, but it stood him in the neighborhood of seven or eight hundred dollars.

Q. The next is the note number 2020, Max Altman. It shows that there was due on it on April 12, 1910, \$790, still unpaid according to the books of the receiver, \$495.17. I ask you what security there was on that note?

A. I have listed number 2020 amount \$790, secured by mortgage undivided  $1\frac{1}{2}$  interest in lower  $1\frac{1}{2}$  7 below Cleary;  $1\frac{1}{2}$  interest in machinery.

Q: Are you acquainted with claim number 7 below on Cleary? A. I am.

Q. Do you know who was interested with him in that property?

A. Duncan Michie and Harry Yager.

Q. Did they mine it? A. They did.

Q. During what year?

A. They mined it in 1908 and 9.

Q. I will ask you to state whether or not that property has any value to-day?

A. The First National Bank owned the lower  $1\frac{1}{2}$  of this same property, and sold it last fall for \$2,000.

Q. Max Altman was an operator, was he not?

A. Yes, sir. He was an operator.

Q. I will ask you to state where he was operating during the winter of 1909 and 1910.

A. He was a partner of S. L. Benbrook. They had a lay on the Boone ground on 4 below Cleary

(Testimony of R. C. Wood.)

Creek, supposed to be some of the richest ground in this district.

Q. He afterwards went to Iditarod, didn't he?

A. He afterwards went to Iditarod. [600]

Q. Do you know where he is at the present time?

A. No, sir.

Q. And you considered this security as ample for the payment of \$790 in April, 1910, did you not?

A. It certainly was, and good to-day.

Q. Now, there is a note of Jonas & Brown for \$2,000, that is, there was \$2,000 due upon it, according to this statement, on the 12th day of April, 1910. It has all been paid except \$185. What security, if any, did the bank hold for that?

Mr. RIDER.—\$1851 due on it.

Mr. MCGINN.—Is it \$1851? The number of that note was 2511.

A. My record shows that Number 2511 was secured by 25 shares of Fairbanks Banking Company's stock. There was another note at that time secured by tobacco in the warehouse; that note was numbered 2476.

Mr. RIDER.—2476 is not on this list.

Mr. MCGINN.—I am talking about number 2511.

A. 2511 is secured by 25 shares of Fairbanks Banking Company stock.

Q. And you considered that good security at that time, did you not?

A. At that time I did. Yes, sir.

Q. Now, the next note is number 2532, John Acheson and J. A. Jesson. John Jesson is indorser for

(Testimony of R. C. Wood.)

the sum of \$100; on which this shows there is still due a balance of \$94. This statement shows the condition on April 12, 1910.

A. This number 2532 shows note of \$100, signed by J. A. Jesson and John Acheson.

Q. Then there is a note number 2541, J. A. Jesson for \$1000, and 2626, J. A. Jesson \$500, and 2762, J. A. Jesson \$500, then 2728 Sutton and J. A. Jesson for \$150. [601]

A. My memorandum number 2541 for \$1000, 2626 for \$500, 2762 \$500; maker J. A. Jesson; then a memorandum showing Sutton et al. number 2728. If there was any security for that, it is not shown here.

Q. Mr. Jesson was a stockholder of the Fairbanks Banking Company?

A. He owned \$10,000 worth of stock.

Q. And had paid for it?

A. And had paid for it.

Q. And during this time, the winter of 1909-10, where was Mr. Jesson operating?

A. I think he was operating with Gust Conrad on Ester Creek. That is my recollection.

Q. I will ask you to state whether or not in April, 1910, you regarded these various loans as being good?

A. Yes, sir, we did.

Q. Mr. Jesson stood well in this community, did he? A. He did.

Q. Refer to number 2640, note of A. S. Crane \$400. I will ask you to state what that record shows that note was secured by in April, 1901.

A. Three notes listed under A. S. and E. A. Crane,

(Testimony of R. C. Wood.)

number 2640 for \$400, number 2882 for \$40, and number 2639 for \$20. Secured by bill of sale 2 engines and scraper, mortgage dump 7 below, first tier, Goldstream, and  $\frac{1}{4}$  interest in all mining dumps to the value of \$130.

Q. I will ask you to state whether or not in your opinion in April 12, 1910, you regarded that as ample security for these loans.

A. At that time we did. They had quite a dump out on [602] Goldstream; that is, they had some dump, I don't know how much. Then Crane was an owner in the Dusty Diamond, or owned the Dusty Diamond, I believe, at that time.

Q. Harry Johnson, note of \$1200, number 2726. You know Harry Johnson? A. I do.

Q. He was an operator here? A. He was.

Q. Where was he operating?

A. I knew Harry Johnson in Dawson, and he afterwards came down here, and I believe he operated on 1 or 2 above of Pedro, and then I think in the winter of 1909 and 10 he operated with a man named Bibby on Goldstream; Johnson & Bibby.

Q. I will ask you to state whether or not in your opinion you regarded that as a good and safe loan in April, 1910?

A. Harry Johnson was always considered in the upper country and in the early days in Fairbanks a good risk, and was reported to have considerable valuable property in Seattle. They say he has that property to-day, but I don't know.

Q. You regarded it good at that time?

(Testimony of R. C. Wood.)

A. We did.

Q. Note number 2703, T. J. Williams and Brown, for \$100. J. W. Brown.

A. Teddy Williams I think was operating a saloon at Cleary at that time. I wouldn't be positive about it, but I think he was. J. W. Brown was a saloon keeper and ran the Eagle Saloon.

Q. Did you consider that good at that time?

A. We considered that note good. Mr. Brown afterwards sold his interest in the Eagle Saloon, and got a good deal more than that for it. [603]

Q. Adolph Rupp, notes 2761 and 2945.

A. 2945 for \$1000, 2761 for \$3300 and 3118 for \$555. Mortgage on undivided  $\frac{1}{2}$  interest in lease 4 below, first tier, right limit, Ester; also  $\frac{1}{2}$  interest machinery; also dump on Carroll & Parker fraction on Fairbanks Creek.

Q. I will ask you to state—you knew Adolph Rupp, did you not?

A. There are other memoranda here, if you want them, if I am supposed to read them all—memoranda in the book. That was the security, though.

Q. That was the security. A. Yes.

Q. What is the memoranda?

A. This mortgage was never recorded. Rupp filed a second mortgage on machinery—no good. Rupa since gave mortgage to secure all creditors, and the Fairbanks Banking Company appointed trustee.

Q. Do you know how much was realized upon that? A. No, sir. I don't know.

Q. He made an assignment for the benefit of all



(Testimony of R. C. Wood.)

of his creditors, did he not?     A. Yes, sir.

Q. You know that there was about 83 per cent that was paid on that?

A. No, I do not. I don't know anything about that.

Mr. RIDER.—Don't lead your witness so much.

Mr. MCGINN.—I wanted to find out if he knew. This is a matter I can prove.

A. If I remember correctly, in 1909 and 10 he was working out on Ester, and I don't think he had failed at that time, because this pencil memorandum has been made afterwards.

Q. Wasn't he considered good at that time? [604]

A. He was considered good at that time, and always had a good standing in the community. At one time he was an owner in 2 above on Fairbanks Creek, and he was operating on Tenderfoot Creek. He had charge of heavy mining operations on Dome Creek, and was always considered a good man and a good miner.

Q. Mr. Rupp afterwards went to Iditarod?

A. So I believe.

Q. You considered that loan good at that time?

A. I believe that we did.

Q. J. C. Arnell and Headman number 2792.

A. Number 2792 for \$1273.87, signed by J. C. Arnell and Headman Mortgage undivided  $\frac{1}{4}$  interest in bench 2d tier, left limit, Little Eldorado.

Q. I will ask you to state whether or not in your opinion you regarded that as ample security for the payment of that note in April, 1910.

(Testimony of R. C. Wood.)

A. We did, yes, sir.

Q. I call your attention to note 2857 of Tharp & Rusk.

A. I have that as number 2857, April 20, 1909, for \$1000. Mortgage on 80 acres at Chatanika, and the east half of Lot 5 in Block 2 west.

Q. Was there any other security at that time?

A. The record don't show it, but I think they had considerable goods in the warehouse of the Fairbanks Banking Company. They kept a stock book at that time.

Q. What?

A. They had a record of the warehouse books at that time.

Q. Did you have a mortgage on everything that was in the warehouse to secure those notes?

A. This is in our own warehouse. We had possession of the goods. [605]

Q. Did you have possession of it to secure this note? A. That was always the understanding.

Q. There was no writing to that effect.

A. No. But they paid for the goods as they took them out. It doesn't show in the index of the book the name of Tharp Rusk & Smith, but the goods in here that I notice in the index are; Tharp & Rusk I have here on April 26, 1910, on the debit side of this book the amount of \$3,444.55. On the credit side they have, March 25, 1909, groceries in stock in warehouse \$1850.62, grocery stock in Ryan's warehouse \$512.73, harness stock in bank warehouse \$2,236.02, furniture goods in bank warehouse \$674.02,

(Testimony of R. C. Wood.)

hardware goods in bank warehouse \$339, hardware, harness, clothing etc., \$726.09. Withdrawals—it is not necessary to go all through those—the total of withdrawals amount to about \$825.

Q. What do the others amount to?

A. \$6,339.79.

Q. I will ask you to state whether or not you regarded those securities, in addition to what you mentioned before, as sufficient for the payment of the indebtedness of Tharp, Rusk & Smith in full.

A. I did, yes, sir. Tharp, Rusk & Smith had always been heavy borrowers from the Fairbanks Banking Company. They did a heavy business in 1905, 6, 7 and 8, and always had a good credit with the bank.

Q. And you considered this note good at that time on April 12, 1910?

A. In 1910, with the security we had at that time, it was good. [605½]

Q. The note of J. F. Struthers. I will not go into that, because Mr. Hurley testified he thought that was good.

Q. W. B. Morgan, \$800, note number 2990.

A. Number 2990, \$800, July 3, 1909, due on demand, W. B. Morgan. On a memorandum here; guaranteed by E. T. Barnette.

Q. And you regarded that as good—(Interrupted).

A. Yes. That was guaranteed by Barnette.

Q. —on April 12, 1910? A. Yes.

Q. Did you know A. McArthur?

A. I knew A. McArthur. He was the first man, I believe—one of the first men that opened up an ac-

(Testimony of R. C. Wood.)

count with the Fairbanks Banking Company, partnership, and I remember him for that reason. He was one of the first ones.

Q. This list shows that upon the 12th day of April, 1910, he was indebted to the Fairbanks Banking Company in the sum of \$176.00 and it shows that there is still unpaid on that account the sum of \$126. What did you know about A. McArthur?

A. I didn't know very much about him, except that he was an operator on the creeks.

Q. Did you know what kind of a reputation he bore?

A. As far as I know he had a good reputation. He never borrowed much money, and didn't seem to be in debt at all.

Q. I will ask you to state whether or not you regarded that as a good loan in April, 1910?

A. Yes, sir, we did. I think he is at Ruby to-day, but I am not sure.

Q. We have number 2941 and 3043, being notes of Don A. Frick, one for \$500 and the other for \$100.

A. I have number 2941 for \$500 and 3053 for \$100, Don. A. Frick, secured by four barrels of whiskey in the [606] Fairbanks Banking Company's warehouse.

Q. That is \$600 total?      A. Yes, sir.

Q. Do you regard that as ample security for the payment of \$600?

A. Yes, sir, we did. Four barrels of whiskey, of from 50 to 60 gallons to the barrel. And I think about the cheapest whiskey you could buy here would

(Testimony of R. C. Wood.)

be about \$3.00 a gallon.

Q. That would be from \$150 to \$180 to the barrel; and four barrels would be from \$600 to \$720. You regard that as ample security? A. Yes, sir.

Q. And so regarded it in April, 1910?

A. Yes, sir. Of course, we didn't know anything about the whiskey.

Q. You mean the quality?

A. We didn't know anything about the quality. As I understand some whiskey sells here for \$8.00 a gallon, and some for \$2.50 and \$3.00.

Q. F. Schaupp, number 2103. It shows \$1,245.81 due on that note on April 12, 1910, and paid on it \$565.21. What security had you for that?

A. We had lot 11, block 1 east. To the best of my recollection there were two buildings and one warehouse on that.

Q. Did you regard that as ample security?

A. We did at that time, yes, sir.

Q. C. E. Claypool, note number 2382, note number 3002, and note number 3455. I will ask you what that was secured by?

A. That was secured by 50 shares of stock of the Fairbanks Banking Company, 75 shares of the Tanana Electric Company, and 45 shares of Tanana Bottling Works stock, and 2 shares of the Masonic Building Association stock; also Lot 2, [607] Block 7 West, between 1st and 2d Avenues.

Q. Any building on there?

A. Yes, sir, a two-story residence on that.

Q. What did you know about the Tanana Bottling

(Testimony of R. C. Wood.)

Works stock at that time?

A. I know the Tanana Bottling Works declared a dividend very often. I know it was a very profitable business, making lots of money then.

Q. And you regarded these securities as ample to satisfy these notes, did you not, at that time?

A. I think so.

Q. C. J. Robinson, note number 2391. "At that time" I refer to April, 1910.

A. C. J. Robinson, secured by 40 shares of Fairbanks Banking Company stock.

Q. How long have you known Charley Robinson?

A. I have known Charley Robinson since 1904.

Q. He was a miner, was he, an operator?

A. Yes, sir.

Q. Where did he operate?

A. He operated on Dome, 6 below on Dome.

Q. What were his circumstances in April, 1910?

A. His standing was first-class, to the best of my knowledge.

Q. He also operated on Vault Creek afterwards, did he not? A. I don't remember.

Q. On the Oregon Group?

A. I don't remember about him operating on Vault.

Q. Charley Robinson was always a first-class risk, was he not? A. Yes, sir.

Q. I will ask you to state whether or not in your opinion you regarded that note—(Interrupted).

[608] A. I did.

Q. —as good in April, 1910? A. Yes, sir.



(Testimony of R. C. Wood.)

Q. Next we have a note of D. H. Jonas, numbered 2380 for \$3,705.96, note number 3016 for \$3,000, and note number 3017 for \$2,000. What do you find with regard to those?

A. Number 3016, \$3,000, and number 3017 for \$2,000. The above are drafts addressed to Ralph Jonas, Brooklyn, New York.

Q. Who was Dan Jonas?

A. Well, Dan Jonas was a man who came to Fairbanks in 1904—the summer of 1904. He was a saloon-keeper—went into the saloon business, he and a man named Brown. They were very successful, and I think in the winter of 1906 and 7 the firm of Jonas & Brown had a deposit with The Fairbanks Banking Company of about \$40,000, carried an account on the books, a credit balance on the books of the bank during that winter that would probably aggregate \$30,000 throughout the winter.

Mr. RIDER.—Q. What winter?

A. The winter of 1907, I think. Then he became *interested* on Vault and Treasure Creeks and mined out there, at the same time he was running the saloon business in Fairbanks. He was a prominent man in Fairbanks, public spirited, and interested himself a great deal in politics.

Mr. McGINN.—Q. I wish you would go on and tell about these drafts.

A. Ralph Jonas is the president of the Brooklyn Trust Company of Brooklyn, New York. There was a letter— He was supplying Dan Jonas with funds for the purpose of making investments in mining

(Testimony of R. C. Wood.)

property in Fairbanks. There was a letter that Dan had in his possession in which his [609] brother stated that he would allow him to draw on him, and, if I remember right, 5,000 or \$20,000. Of course, these advances were made before I was connected with these banks, but I learned this afterwards.

Mr. RIDER.—Are you reading from the book?

A. No, I am speaking from things that occurred at that time.

Mr. RIDER.—I object to that; what he learned.

Mr. McGINN.—Q. There were drafts drawn on his brother? A. So this book says.

Q. Those drafts were not paid?

A. No. They were not paid.

Q. Do you remember in about January or February, 1910, receiving any telegram from E. T. Barrette with reference to this matter?

A. Yes, we did; that is, Jackson did.

Q. You saw the telegram?

A. I saw the telegram.

Q. About what was the date of that telegram?

A. To the best of my recollection it was in January or February, 1910.

Q. Have you made inquiry and search to see whether you could find that telegram in the papers of the Fairbanks Banking Company?

A. I looked there the other day, but couldn't find it.

Q. Did you speak to Mr. Stewart about it?

A. I don't believe I told Mr. Stewart what I was

(Testimony of R. C. Wood.)

looking for, but I told him I wanted to go through the files of that period.

Mr. McGINN.—Have you got that telegram?  
[610]

Mr. RIDER.—What telegram?

Mr. McGINN.—A telegram that Barnette addressed to Jackson in January or February, 1910, relative to this Jonas matter.

Mr. RIDER.—I don't remember to have ever seen it. Mr. Wood says he went through the files.

Mr. McGINN.—Q. I will ask you to state what that telegram said?

Mr. RIDER.—We object as irrelevant, incompetent and immaterial.

The COURT.—What is the purpose?

A. That Barnette at that time wired in to Mr. Wood—

Mr. WOOD.—Not to me, but to the Fairbanks Banking Company.

Mr. McGINN.—Wired to the Fairbanks Banking Company not to take any action against Jonas; that Jonas would settle up these notes when he came in. We want to show that upon the strength of that telegram, Mr. Wood regarded these as good notes.

The COURT.—Very well. Objection overruled.

Mr. McGINN.—What was that telegram?

A. I forget the exact wording of the telegram, but it was to the effect that Jonas would pay the notes when he came back in the spring or in the summer. Jonas was interested in some copper property over in

(Testimony of James W. Hill.)

the Valdez country.

Q. With whom?

A. With Doctor Pohl. And he told me when he left that fall that the Guggenheims had agreed to send their expert to visit this property that winter.

Q. I will ask you to state whether or not in your opinion you regarded those notes as good in April, 1910?

A. We had no reason to regard them otherwise. The bank had advanced to Jonas five or ten thousand dollars on that letter, and the drafts had always been paid. [611]

Q. They had been paid prior to that time.

A. They had.

Q. O. E. Tackstrom, *none* number 2366, on which they say there is a balance of \$346.96.

A. The only memorandum I have is: A stock note 2366.

Q. Does it show how many shares of stock?

A. No. It doesn't.

Q. What do you know about Oscar Tackstrom in 1910?

A. I believe in 1910 Tackstrom was a partner of Thornton, of the firm of Tackstrom & Thornton, engaged in the clothing business here.

Q. Do you know whether or not he sold out his interest?

A. Yes. He sold out his interest to Mr. Fowle.

Q. Do you know when he sold?

A. I forget whether it was 1910 or 1911, but I think it was in 1910.

(Testimony of R. C. Wood.)

Q. He was still interested with Thornton upon the 12th day of April, 1910?

A. I think he was. If he was not interested with Mr. Thornton at that time, he was manager for the Orr Stage Company. He either left the employ of the Orr Stage Company in the spring of 1909 or 1910; I wouldn't be sure about those years.

Q. How long had he been connected with the Orr Stage Company?

A. He had been connected with Ed. S. Orr in Dawson since about 1900, or earlier than that—in 1899, I think.

Q. Do you know whether he was a partner with Orr or not?

A. Yes, I think he was a partner with Orr and Doctor Cassels in the Orr Stage Company in the upper country.

Q. You think at that time he was in partners with Thornton?     A. I think he was. [612]

Q. I will ask you whether you regarded his note in the sum of \$375,00 as good in April, 1910?

A. I did.

Q. Do you know where he is now?

A. I think he is in Ruby.

Q. He afterwards went out and went into business in Oregon, did he not?

A. Yes, sir, in Medford, Oregon.

Q. Do you know how much he got for his interest with Thornton?

A. He didn't sell out to Thornton. He sold to Mr. Fowle.

(Testimony of R. C. Wood.)

Q. How much did he get?     A. I forget.

Mr. RIDER.—I think that is material.

A. It might have been \$10,000.

The COURT.—I think that is going a good ways.

Mr. MCGINN.—Q. M. H. McMullen, number 2669.

That was a stock note, *wasn't*?

A. There was one stock note. I remember that.

Q. The stock was never issued to him, I believe.

A. I don't know.

Q. What property did Mr. McMullen own at that time?

A. There were two brothers. M. H. McMullen was one brother. They were operating a lay on Goldstream, and they owned an interest in 4 above on Dome that has been worked by a man named Canning and Jackson. They have been working that for several years.

Q. Do you know whether or not that claim has produced money?     A. Yes, sir.

Q. Do you know whether or not McMullen still owns that interest?

A. I think he does, as far as I know. I know he sent me in [613] a bill of sale to deliver to a man on the payment of so much money.

Q. When was that?

A. I think that was in 1911; in 1910 or 1911.

Q. McMullen also mined on Goldstream?

A. Yes, sir, he mined there.

Q. Do you know where he is at present?

A. Well, I knew last winter. I saw him outside last winter.



(Testimony of R. C. Wood.)

Q. What is he doing?

A. He is running a hotel on the corner of First and Pike Street, Seattle, Washington.

Q. You regarded his note for \$1,000 as good—(Interrupted). A. Yes, sir.

Q. —in April, 1910? A. Yes, sir.

Q. The next is Ray Brumbaugh, number 2362, upon *there* there was due \$7,762.50, April 12, 1910; and, as this statement shows there is still unpaid the sum of \$5,431.33. What do you know about that? That note is indorsed by H. C. Hamilton,—signed by H. C. Hamilton.

A. Ray Brumbaugh, number 2362, \$7,762.50.

Q. Who was Ray Brumbaugh?

A. He was a member of the firm of Brumbaugh, Hamilton & Kellogg.

Q. What business were they engaged in?

A. They were engaged in running a machinery depot and hardware business.

Q. They afterwards sold out?

A. They afterwards sold out to the Samson Hardware Company.

Q. Do you know whether H. C. Hamilton is still interested in the Samson Hardware Company?  
[614]

A. Yes, sir, he is a stockholder. It is a corporation.

Q. In 1910 what was the condition around Fairbanks as to whether times was good, and prospects good, and business good.

A. 1909 I think was the best year that Fairbanks

(Testimony of R. C. Wood.)

had, that is, that is the largest production of gold.

Q. How was 1910?

A. 1910 was good, almost as good as the previous year.

Q. State whether or not Brumbaugh, Hamilton & Kellogg did a great deal of business?

A. In 1910 Ray Brumbaugh came up from the Iditarod and he showed me drafts that he had on the Scandinavian-American Bank of Seattle issued by the Miners & Merchants Bank of Iditarod to the extent of \$75,000 at that time from the business he had down there.

Q. That was when?      A. In 1910.

Q. Do you remember about that time?

A. It was in the fall or early winter. It was on his return from the Iditarod. I don't know but what he negotiated those drafts through the Fairbanks bank.

Q. You say he negotiated them through the bank?

A. I couldn't say that he did. I know he went outside. The books of the Fairbanks Banking Company will show that.

Q. Of course these drafts were in favor of Brumbaugh Hamilton & Kellogg.      A. I think so.

Q. Do you know H. C. Hamilton?      A. I do.

Q. You regarded the note of Brumbaugh as absolutely good in April, 1910?

A. Yes, sir. The firm of Brumbaugh & Hamilton were heavy [615] borrowers from the Fairbanks Banking Company. I think at one time they were indebted to that bank \$60,000 or \$70,000, and they paid it up. They were carrying a stock of goods on

(Testimony of R. C. Wood.)

hand that would be over \$100,000, and I presume sometime in the year it would go over two or three hundred thousand. They were doing a tremendous business in Fairbanks.

Q. What do you know about Mr. H. C. Hamilton?

A. Mr. Hamilton was a member of the firm of Brumbaugh, Hamilton & Kellogg, and at one time owned considerable valuable mining property at Fairbanks. I think he owned and still owns 8 below on Cleary, and I believe he is interested in 9, but I wouldn't be sure as to 9, but I am certain about 8, and I know there is a lay on that ground to-day, working that ground.

Q. Do you know whether or not he is interested in the steamer "Samson"?

A. He owns—Yes, they own the steamer "Samson."

Q. You regard that note as good, do you?

A. Yes. That note is good now.

Q. Do you know anything about any property they own over on Birch Creek?

A. I know they had an option on what they call Harrison Creek claims. I know they made trips over there to investigate the property.

Q. The next item is number 2203 note of John Collins \$150, I will ask you to state whether or not that was a stock note.

A. Yes. That was a stock note. [616]

Q. For two shares of stock?

A. It doesn't say. It says; Stock note.

Q. Do you know whether or not he paid anything on his stock note?

(Testimony of R. C. Wood.)

A. I have here; April 16th, paid \$2.50 on the original note.

Q. The stock would be of the par value of \$200.

A. Yes, I think he paid \$50 on it.

Q. I will ask you to state whether you regarded that stock in April, 1910—(Interrupted.)

A. Yes. We did.

Q. —as good security for that? A. Yes.

Q. This note of F. B. Brazeau number 1435 was for \$400. I think that has been pretty well covered. On that note on April 12, 1910 there was due \$400, and it still shows that there is a balance of \$102. I think that has been sufficiently covered. The next is number 1240, Harry Cribb for \$1001.60. I will ask you to state whether or not you regarded the note of Harry Cribb—(Interrupted).

A. Yes.

Q. —good at that time for the sum of \$1000?

A. Yes. Harry Cribb was easily worth that money. He was good.

Q. What property did he own at that time?

A. He owned the Gordon Glass Block.

Q. Right up here on Cushman Street?

A. Yes, sir. And he owned his home up there that Herpick lives in at present, and he had a big stock of goods.

Q. What business?

A. Glass, sash and door, and wallpaper.

Q. You regarded his note as good in April, 1910?

A. Absolutely good. [617]

Q. Edgar Cathcart. What does your record show in regard to that?

(Testimony of R. C. Wood.)

A. It shows that there was a deed of lot 3, block 5 east, corner 4th and Hall; and that afterwards the cabin was destroyed by fire.

Q. You don't know when the cabin was destroyed?

A. Yes, it was destroyed the 22d of February, 1910.

Q. Do you know what the lot was worth at that time?     A. No. I do not.

Q. But you knew Ed. Cathcart?

A. Yes, sir. I knew him.

Q. State whether or not you believed this note was good.

A. I think the lot on the corner of 4th and Hall would be worth \$200. I think it would be worth that to-day.

Q. How about Cathcart himself?

A. I didn't consider Cathcart very good at that time.

Q. You depended upon the security.

A. Upon the security.

Q. F. Allberg, \$66.53. This still shows unpaid \$33.28.

A. That is Frank Allberg of the Tanana Bottling Works?

Q. Yes.

A. He has always been in a position to pay that. He just came back from a trip to Europe.

Q. You regarded him as good pay?

A. Yes, sir. And he is good to-day.

Q. Now, the note of W. Sam Clark; 1403, 1495 and 1528.

A. Number 1403 for \$800, W. Sam Clark; 1495 for

(Testimony of R. C. Wood.)

\$250, R. H. Stafford; number 1528 \$1000, R. H. Stafford. It shows here; were indorsed secured by Stafford.

Q. Anybody else?

A. My record don't show anybody else. [618]

Q. Doesn't it show the indorsement of Frank Mates?

A. No. This record doesn't show that.

Q. Who was R. H. Stafford?

A. He was a prominent mining man in Fairbanks, and made considerable money in the early days.

Q. Do you know whether or not these notes were afterwards indorsed by John A. Clark?

A. I don't remember. Mr. Clark told me that he afterwards indorsed them.

Q. These were the notes that were spoken of here yesterday?

Mr. RIDER.—Yes. That was all threshed out yesterday.

Mr. McGINN.—Q. Who was R. H. Stafford?

A. He was a prominent mine operator here and made considerable money.

Q. I will ask you to state whether or not at one time he was interested in the claim called 3 below on Dome Creek?

A. Yes, sir. I believe he was in that litigation.

Q. Do you remember how much he received for his interest in that?

A. I think we paid him the money, but I forget; something like \$10,000, I think.

Q. What was the standing of Mr. Stafford in this community as to honesty, integrity and uprightness?



(Testimony of R. C. Wood.)

A. Good, so far as I know.

Q. I will ask you to state whether or not you regarded those notes as good in April, 1910?

A. Yes, sir, those notes were good.

Q. There is note 2017 A. R. Heilig and Leroy Tozier, for the sum of \$500, on which they say there is now \$135.04 still unpaid. I will ask you to state whether you considered the note of A. R. Heilig and Leroy Tozier for the sum of [619] \$500 as good on April 12, 1910? A. I did. Yes, sir.

Q. The next is number 2076 note of John Moe and Schroeder for \$180, upon which they say there is a balance of \$37.50 still unpaid. Who was John Moe?

A. John Moe is a saloon keeper in Fairbanks.

Q. And who is Schroeder?

A. Schroeder was a partner of his at that time.

Q. Where has John Moe been engaged in business for the last couple of years?

A. At the Mecca, corner of 4th Avenue and Cushman Street.

Q. It was destroyed by fire last winter.

A. Last winter. Yes, sir.

Q. I will ask you whether or not you considered the note of John Moe and Schroeder in the sum of \$180 as good on April 12, 1910?

A. I certainly did.

Q. It is still good, isn't it? A. Still good.

Q. I refer you to the note of William Barrett, number 1975 upon which they say there is a balance of \$8,809.21, and ask you to state what that was secured by?

A. 1975 secured by assignment of insurance poli-

(Testimony of R. C. Wood.)

cies now in course of collection. Deed lot 2 block 1 east between 3d and 4th.

Q. That is this warehouse over here.

A. Yes. The Barrett warehouse.

Mr. RIDER.—Q. What note was secured by the insurance?

A. I have it, number 1975, \$9,312.71. Following that: note number 3170 for \$73.45, and notation “insurance expenses” after. [620]

Q. After that last note?

A. After the last, \$73.45. That was paid on February 3, 1910. That is the expenses that were paid.

Q. Do you know whether 1975 was secured by that insurance?

A. I have followed these notes with the descriptions appearing underneath them, and that is what it was secured by; that is the record.

Mr. McGINN.—Q. The bank haven’t a deed to that real estate?

A. They had a deed at the time this book was made out, a deed to lot 2 in block 1 east.

Q. Do you know what would be a fair and reasonable value of that property in April, 1910?

A. The only thing that I can say about that is that I was acquainted with Charley Suter at that time, and he was—renting the property, and he told me he was going to try and buy it from the Fairbanks Banking Company. I went to them and I believe they told me they wanted \$6,000 for the property then.

Mr. McGINN.—I want the minutes of January 2, 1909. In this connection we desire to introduce in

(Testimony of R. C. Wood.)

evidence a portion of the minutes of the executive committee of the Fairbanks Banking Company held at 3 P. M. at the office of the Corporation, Fairbanks, Alaska, James W. Hill, vice-president— (Interrupted).

Mr. RIDER.—That is objected to as irrelevant and immaterial.

Mr. McGINN.—I want to show the value of that property in 1909.

The COURT.—You may introduce it, but it is a long way off.

Mr. McGINN.—(Reads):

“Fairbanks, Alaska, January 2, 1909. It was reported to the committee that Charles Suter desired that the bank place a sale price on the Barrett property on [621] 3d Avenue. It was the sense of the meeting that this property should not be sold for less than \$6,000.”

I desire also to read (Reads):

“The question of renting the Royal Hotel to the postoffice should an opportunity present itself was discussed. It was the sense of the meeting that the rental should not be less than \$125 per month as the property stands.” Then the meeting of the board of directors held on January 12, 1909, at which they ratify the action of the executive committee.

Mr. RIDER.—The same objection to that.

The COURT.—The same ruling.

Mr. RIDER.—I will admit there is an entry there ratifying it, if you say it is there.

Mr. McGINN.—Q. I will ask you to state whether or not, in addition to this property, Mr. Barrett had

(Testimony of R. C. Wood.)

goods, wares and merchandise that was placed with the Fairbanks Banking Company at that time.

A. Well, this record doesn't say that at all. I know that the bank—whether that was in 1909 or 1910—the Fairbanks Banking Company had put Mr. Peck as custodian of goods that Barrett held in his own warehouse at that time, and that afterwards Barrett was permitted to take these goods to the Iditarod or Innoko.

Q. You don't know whether that was in 1909 or 1910.

A. No. I don't remember what year it was.

Q. Have you a record of it?      A. No.

Q. A. H. McNeer, note number 2556.

A. Well, I have; number 2556 for \$1592.33. Mortgage on 11 horses, 5 wagons, etc. [622]

Q. I will ask you to state whether you regarded that 11 horses and 5 wagons as amply security for payment of the sum of \$1,592.33 in April, 1910?

A. I certainly would, as far as I know.

Q. This Barrett loan of \$8,809.21 was charged off in December.

A. There was a Barrett loan— (interrupted).

Mr. RIDER.—Not this one. That was another one.

A. There was a Barrett loan of something like \$8,000 charged off in December, 1909.

Mr. McGINN.—Q. But you regarded this as ample security at that time?

A. Yes, sir. Those insurance policies were in the course of collection. There was almost \$17,000 worth of insurance being collected at that time.

(Testimony of R. C. Wood.)

Q. Light & Haggerty— Before going to that. Now, you had, in addition to that, this building?

A. This building over here.

Q. What do you know about Billy Barrett?

A. Billy Barrett came to Dawson, I think, in 1898 and was *interest* with Barrett & Hull there, at one time one of the largest commission men in Dawson, and one of the best rustlers that ever came to the country. He is now with the New York Life Insurance Company, and I understand is the general manager's right hand man; at any rate, his name appears on the head of their stationery.

Q. He was burned out here in 1906?

A. In the fire, yes, sir.

Q. And afterwards went to the Iditarod and burned out there too?

A. He represented here that he was burned out, yes. [623]

Q. He was burned out again in the Iditarod?

A. Yes, I think he was burned out again.

Q. Note number 2667 note of R. R. Myers for \$1,000. I don't think you have any security for that. That is Doctor Myers the dentist?

A. That is Doctor Myers, the dentist. There is no security.

Q. You regarded him in April, 1910, as worth the sum of \$1,000.

A. I still say he is good for \$1,000.

Q. And you so regarded him then?

A. Yes, sir.

Q. John F. Baird, number 2702. I don't believe that note is secured. Hurley testified that was good.

(Testimony of R. C. Wood.)

Did you regard that good in April, 1910?

A. Yes, sir.

Q. T. L. Thurston, number 2755, for \$950. What security, if any, did you have for that in April, 1910?

A. That was secured by a mortgage. I have that; No. 2755 for \$950. An indorsement on April 19th of \$100. Mortgage lot 9, block 1, East, between 3d and 4th.

Q. Do you know that property? A. Yes, sir.

Q. I will ask you whether you consider that worth \$950? A. Yes, sir, easy.

Q. A house over here on 3d Avenue?

A. On 3d Avenue, yes, sir. [624]

Q. You regarded that as good in April, 1910?

A. Yes, sir.

Q. W. M. Anderson, note number 2932.

A. I have 2932 and 2933.

Q. This just refers to 2932. What have you with regard to that?

A. I have. Secured by order for \$2,000 on merchandise.

Q. Do you know where this merchandise was situated?

A. This record doesn't show it, but it was situated in the Tanana Valley Railroad Company's warehouse at that time.

Q. Did you regard that as ample security—

A. Yes, sir.

Q. —at that time in April, 1910— A. Yes.

Q. —for the sum of \$850? A. Yes, sir.

Q. Now, there is a draft Scandinavian-American Bank, number 2946 for \$575. I wish you would ex-



(Testimony of R. C. Wood.)

plain about that.

A. In December of 1907 at the time the Fairbanks Banking Company suspended, there was a man named Drouin who had purchased a draft from the Fairbanks Banking Company on the Scandinavian-American Bank. When it was presented in Seattle, payment was refused. The banks were on a scrip basis, and payment of the draft was refused by the Scandinavian-American Bank. When I arrived in Seattle in December, 1907, I met this man Drouin and he wanted some money. So I told him I could give him \$500 then on the draft. He said that would be sufficient at that time. So I took the draft—Mr. Drouin and I went to the American Savings Bank & Trust Company, and he indorsed the draft, and I placed it in escrow with that bank, with the agreement that if Mr. Drouin should deposit \$500.00 to the credit of the Fairbanks Banking Company they should [625] deliver him the draft back again and remit the \$500 to the Fairbanks Banking Company, Later on, when the credit had been given to the Fairbanks Banking Company by Dexter Horton, by which they were able to take care of all those outstanding drafts which at that time amounted to two or three hundred thousand dollars, Mr. Drouin went up to the American Savings Bank and Trust Company and took this draft from them, and they neglected to get this \$500 that had been paid on it. Afterwards a claim was made by the Fairbanks Banking Company upon this American Savings Bank & Trust Company for the money, and this was in the course of collection at that time.

(Testimony of R. C. Wood.)

Q. This seems to be the Scandinavian-American Bank?

A. It was a draft drawn on the Scandinavian-American Bank.

Q. And this was in the course of collection at that time?     A. Yes.

Q. And you regarded it as good?

A. We couldn't see why the American Savings Bank & Trust Co. wasn't liable for it. It was left with them in escrow, with instructions to deliver it to Drouin when he paid \$500, or deposited the \$500 to the credit of the Fairbanks Banking Company; and they delivered the draft and neglected to collect the \$500. The draft was either for \$1,000, or it might have been for \$1,500. I don't remember the exact amount. But that was the transaction at that time.

Q. Here is a note number 2960, S. D. McIlroy, known as "Tex McIlroy" for \$100.

A. I don't think that that was secured. I see no notation here of any security.

Q. State whether or not you regarded Tax McIlroy at that [626] worth the sum of \$100?

A. Yes, sir.

Q. That is, in April, 1910?     A. Yes, sir.

Q. Did he have any property?

A. He owned an interest in the Chatham Mining Company, and afterwards he was paid three or four thousand dollars in cash for his interest in that property.

Q. Do you know when he was paid that?

A. I think it was in 1911.

(Testimony of R. C. Wood.)

Q. Or 1912?

A. It might have been in 1912. I don't remember the year.

Q. L. S. Robe, \$750. Who was Mr. Robe?

A. Mr. Robe was a civil engineer. He had been in the employ of the North American Transportation & Trading Company at Dawson and Fortymile for some years prior to his coming to Fairbanks, which I think was about 1905. I have here: Number 3075 secured by orders on Townsite Trustee for surveying.

Q. He surveyed the townsite here?

A. He surveyed this townsite.

Q. State whether or not Mr. Robe was a man of considerable earning capacity.

A. He is a very responsible man. He is considered capable, and has always held—that is, he held a great many very responsible positions. I think his position with the N. A. T. Company was such that they depended a great deal upon his judgment and work in purchasing mining property.

Q. I will ask you to state whether or not you collected notes from him after this time, and in the Iditarod? A. Yes, sir. I did. [627]

Q. He went to Iditarod when?

A. He went to Iditarod, and we sent a note down to the Miners & Merchants Bank in the Iditarod, and he paid it.

Q. Did you consider that note of his good in 1910?

A. Yes, sir. It was good.

Q. Note number 3094 of T. C. Brown for \$600. It shows still unpaid on this statement the sum of \$502.

(Testimony of R. C. Wood.)

A. I have that note dated March 17, 1909, due March 17, 1910, for \$600. Payment made of \$94; secured by 7 shares of Fairbanks Banking Company's stock.

Q. Who was T. C. Brown?

A. T. C. Brown was a carpenter in the employ of the Northern Commercial Company.

Q. How long had he been in their employ?

A. I don't know. Several years.

Q. He had paid for his stock in the Fairbanks Banking Company?

A. He had as far as I know, yes, sir.

Q. What was his standing in this community?

A. His standing was good.

Q. I will ask you to state whether or not, taking into consideration the moral risk as well as this security, you considered Mr. T. C. Brown good for that amount in April, 1910?

A. We did, and I think that the records of the bank will show that Mr. Brown had been accommodated several times before without security, and always paid his bills.

Q. E. M. Keyes, number 3103.

A. Number 3103, \$2500.

Q. Who was Mr. Keyes?

A. Mr. Keyes is a prominent mine operator on Cleary Creek. He has been there since about 1905 or 1906. [628]

Q. And what was his standing in the community in 1910?

A. His standing at that time was good.

(Testimony of R. C. Wood.)

Q. Do you know where he was operating in 1910 in April?

A. In 1910 he was operating on the lower end of Cleary. I wouldn't be sure on what claim. Last year he was operating on 17 below on Cleary.

Q. Was he considered good in 1910 for that amount?     A. He certainly was.

Q. Did you regard that as a good note in April, 1910?

A. I did, yes, sir. I have a notation here: "P. M. Rettig." I wouldn't say Rettig was on the note or not, but Mr. Rettig is a partner to-day and was at that time, I believe, a partner of Mr. Keyes.

Mr. McGINN.—Have you got that note?

Mr. RIDER.—No, sir. That note was taken up. Reddig's name was not on the note.

Mr. McGINN.—Q. J. Albert Jackson note of \$500, April 12, 1910, on which they say there is \$333.71 unpaid.

A. That was dated the same day the dividend was declared. It was considered good at that time, and is good to-day.

Q. The note is dated November 15th.

A. I thought he said April 12, 1910.

Mr. RIDER.—The note is dated November 13, 1909.

Mr. McGINN.—Q. Mr. Jackson was the cashier, was he not?

A. Yes. He was the cashier.

Q. Of the Fairbanks Banking Company. And what salary was he getting?

(Testimony of R. C. Wood.)

A. He was getting \$400 a month.

Q. In addition to that did he own any stock of the Fairbanks Banking Company?

A. Yes, sir. I think he owned 5 shares. [629]

Q. Does the record show there in that respect?

A. It says: Note given for 5 shares of F. B. Co. stock.

Q. That is the note that was given for the stock?

A. Yes, sir.

Q. Does it show that there had been any payments made?

A. Yes, sir. It shows that on April 16th there was a payment of \$75.

Q. What other payment, if any?

A. That is all that is shown on here.

Q. You regarded that note good on April 12, 1910?

A. Yes, I regard that note good.

Q. He continued there until the bank closed?

A. Yes, sir.

Q. The bank could have withheld his salary at any time in payment of that? A. They certainly could.

Q. The next are notes numbers 1304, 2099, 2115 and 506, the Sorenson notes, aggregating \$1889.69 at the present time unpaid.

A. I don't believe that those notes appear here at this time. I think the bank had a mortgage on some property in town, and foreclosed that mortgage, and carried it in Real Estate No. 2 account in the books.

Q. What property was that?

A. It was property known as the Royal Hotel. It



(Testimony of R. C. Wood.)

is on Front Street, next to Abe Stein's store.

Q. Who were the Sorenson Brothers?

A. The Sorenson Brothers were two brothers that came to Fairbanks I think in about 1905, and opened up a restaurant I think and a store also—I wouldn't be sure about the store, but I am positive about the [630] restaurant. And they did a great deal of business with the Fairbanks Banking Company. And they afterwards went to Cleary, I believe, and opened up a restaurant. At that time they were considered good, that is, at the time they were doing business with the bank they were considered good. They were a good moral risk, and men of good earning capacity.

Q. Do you know whether they owned any property at Cleary?

A. I think they owned their restaurant building there, and I think they had some ground out on Ester Creek, and I think they worked and mined there one year.

Q. How many brothers were there?

A. I remember two. One was named Sufus and one was named Neil.

Q. Do you know what that note was carried for, and what the real estate was carried for?

A. No, I don't remember. I would have to look up the books for that.

Q. Could you determine that fact, say on April 12, 1910?

A. (Examines book.) It was carried at that time at \$3968.28.

(Testimony of R. C. Wood.)

Q. The notes at that time were not carried as an asset? A. No, sir, not that I know of.

Q. From what you know of that property it is situated down on First Avenue near Wickersham Street, is it not? A. Yes, sir.

Q. I will ask you to state whether or not in your opinion that property was worth that amount in April, 1910.

A. I think it was. It afterwards sold for \$3300.00 this past year.

Q. Do you know that it sold for that amount? [631]

A. No, I wouldn't swear that it sold for that amount, but I think that was the amount that it sold for. Mr. Stewart would know about that.

Q. You regarded it as of that value in April, 1910?

A. Yes. I don't know whether there was a deficiency judgment gotten against the Sorenson Brothers at that time or not, but there might have been. That would have had some value too.

Q. The only value that you carried was the real estate value. A. Yes, sir.

Q. The next is number 3230, John Hedman, \$250; April 12, 1910, still unpaid \$95.67. What was that secured by, if anything?

A. I have here: Note number 3015 for \$105, signed by Hedman and Ruth, and another note 3230 for \$250 signed by John Hedman. The first note of Hedman and Ruth was marked, paid February 3, 1910, and that was secured by mortgage on 250 cords of wood, 12 horses on Ester Creek.

(Testimony of R. C. Wood.)

Q. What was wood worth on Ester Creek at that time?

A. Wood in the hills would be worth about \$4.00 a cord.

Q. I will ask you whether or not you regarded that security as ample for this note of \$250 in April, 1910?     A. We certainly did.

Q. In going over these matters, I have not referred to the Tanana Electric Company. What was the Tanana Electric Company?

A. The Tanana Electric Company was a corporation organized for the purpose of supplying light and power to the miners on the different creeks. They installed a plant there at the mouth of Cleary Creek, and afterwards I [632] believe moved it about two miles to the mouth of Poker Creek.

Q. Do you know who the president of the Tanana Electric Company was?

A. I think Mr. C. E. Claypool.

Q. Or was he vice-president?

A. I guess Mr. Chilberg was president, and Claypool vice-president.

Q. Ed Chilberg of Seattle?     A. Yes.

Q. I will ask you to state whether or not Chilberg came to Fairbanks in 1906 or 1907?

A. I think it was in 1906 that he came here in company with Mr. Nichol, who I believe at that time was president of the fair.

Q. What was done by him at that time in the way of interesting local people in the Tanana Electric Company?

(Testimony of R. C. Wood.)

A. He circulated a subscription list in Fairbanks upon which was subscribed \$70,000 worth of stock, as near as I can remember. One of the conditions of that subscription was that Mr. Chilberg agreed to borrow, for the purpose of installing turbines and water plant on Poker Creek, the sum of \$100,000.

Q. Did he agree to borrow that, or did he agree to advance that?

A. He agreed to borrow it, as near as I can remember. He agreed to secure a loan for the Tanana Electric Company. I think that was it.

Q. Do you know whether or not there was a mortgage at that time executed by the Tanana Electric Company to the Scandinavian-American Bank?

A. It was that time or shortly afterwards that there was a [633] mortgage executed by the Tanana Electric Company for \$100,000 for all their purposes.

Q. How much of this subscription money was paid?

A. There was \$40,000 paid in cash by different subscribers in Fairbanks, which was remitted to the Scandinavian-American Bank in the fall of 1906 or winter of 1907. And Mr. Richmond subscribed \$25,000 stock in the concern, and his transactions were made directly with the Scandinavian-American Bank. I don't know whether he paid cash.

Q. What arrangement, if any, was made by Mr. Chilberg to have the Scandinavian-American Bank and the Fairbanks Banking Company advance money to the Tanana Electric Company?

(Testimony of R. C. Wood.)

A. Mr. Chilberg left an order to the effect; for the Fairbanks Banking Company to advance money from time to time to the Tanana Electric Company as they needed it, and that the Scandinavian-American Bank would transfer credits from time to time to take up the advances that were made by the Fairbanks Banking Company.

Q. Just state what the Fairbanks Banking Company did in pursuance to that.

A. As soon as Mr. Hutchinson was sent in here by Mr. Chilberg—

Q. He was manager of the Tanana Electric Company?

A. He was manager of the Tanana Electric Company, and in installing this water plant and moving the machinery and the plant it took a great deal of money, and Mr. Hutchinson drew checks on the Fairbanks Banking Company on Fairbanks, also on their branch bank at Cleary, and, when this amount reached the sum of \$18,500, the Fairbanks Banking Company telegraphed Mr. Chilberg or the Scandinavian-American Bank, and he wired back a credit for them. Then they kept on advancing this money until they had reached another [634] sum of \$25,000, and the bank wired them about that, and he wired a credit for that. They then continued making these advances until the fall of 1907 when the amount reached approximately \$30,000. At this time Mr. Richmond—or before this time in the fall, on the last boats, Mr. Richmond went to Seattle. He was manager of the Tanana Electric Company

(Testimony of R. C. Wood.)

at that time. He told us before he left—I believe a note was executed by the Tanana Electric Company in favor of the Scandinavian-American Bank for the sum of \$56,500, or it might have been more, but it was to take up the balance due on the mortgage, and credit was to be transferred from Seattle to the Fairbanks Banking Company. This amount reached \$30,000, and, when Mr. Richmond arrived in Seattle, he wired to Mr. Wilson, who was the secretary of the Tanana Electric Company, that Chilberg was in New York, and that matters would be arranged upon his return. The bank then later on wired Mr. Chilberg that they had made these advances, and requested him to telegraph a credit. In answer to that, Chilberg wired back to advance nothing more to the Tanana Electric Company. In the meantime Chilberg, or the Scandinavian-American Bank, had advanced, as near as I can remember, to the Fairbanks Banking Company against this credit possibly ten or eleven thousand dollars.

Q. How long did that credit with the Fairbanks Banking Company stand, as far as you know?

A. As far as I know, it stands to-day.

Q. Was it standing there on the 12th day of April, 1910?

A. Yes, sir.

Q. Did they ever make any demand on the Fairbanks Banking Company for that \$10,000?

A. Not that I know of. [635]

Q. Now, you went out in November, 1907?

A. Yes. I went out in November, 1907.

Q. What steps, if any, did you take toward secur-



(Testimony of R. C. Wood.)

ing the collection of this amount?

A. Well, I went first to Mr. Wolfolk, who was assistant cashier of the Scandinavian-American Bank, and asked him if Mr. Chilberg had put through the credit to the Fairbanks Banking Company. He said no, he had not, but he expected he would; that advances had been made against some drafts that had come in, and he said he was anxious to have the credit go through so he could know where the credit was, as drafts of the Fairbanks Banking Company were being presented to him and he didn't know what to do with them. I took the matter up with Mr. Chilberg, and he said that, owing to conditions that existed at that time, and the panic that was on, it was impossible for him to advance the credit at that time. He said that if I cared to, I could go before the board of directors of the Scandinavian-American Bank.

Q. What did he say in regard to the payment, or knowledge of the payment?

A. He simply said he was not in a position to pay it. He never disputed the amount in any way. And when I appeared before the directors of the Scandinavian-American Bank and told them all about it, they said: Everything is up in the air, and the Miners & Merchants Bank of Nome has drawn against us for \$700,000, and this panic going on, we can't listen to any proposition of that kind at present.

Q. Did you place the matter in the hands of an attorney there?

(Testimony of R. C. Wood.)

A. Yes. We were anxious to have these outstanding drafts paid at that time, and I went to Kerr & McCord. [636]

Q. Did you lay the matter before them?

A. Yes.

Q. What did they advise you?

A. Mr. McCord and I went down and had a talk with Chilberg in his office in the Scandinavian-American Bank, and the only satisfaction we could get out of them was that he was not in a position to pay the money. McCord said: "The Fairbanks Banking Company needs this money to pay these drafts, and, unless you can pay them, we will start suit tomorrow." Chilberg didn't say anything, and we walked out of the office.

Q. What did Mr. McCord, after you put the facts before him, advise you as to the probability of collecting this money?

A. He said there would be absolutely no question of recovering it.

Q. Why didn't you continue to proceed with it?

A. Well, I wired—the reorganization of the bank was going on here, and I wired them here—I thought it better not to proceed with this lawsuit on my own responsibility, so I wired, and they wired back not to. I wired and told them I intended to institute suit in the morning or the next day, and a short time afterwards they wired back not to do anything until further advised, or something to that effect.

Q. I will ask you whether or not in April, 1910, knowing the facts as you did, and the advice you re-

(Testimony of R. C. Wood.)

ceived, you believed this was a good and valid claim existing against the Scandinavian-American Bank?

A. I considered it just as good then as I did in 1908.

Q. What were the earnings of the three banks here in the year 1909? [637]

A. The earnings of the three banks were \$131,-332.91. That was from the 1st of January, 1909, to the 31st of December, 1909.

Q. When you went over this list with Jackson of the loans of the Fairbanks Banking Company, there were a great many more notes than what I have read to you here? A. Oh, yes.

Q. You and Jackson thought that all of the notes, except those that you charged off at that time, were good.

A. We believed we charged off all bad notes that existed at that time.

Q. And you went through the securities and notes of the Washington-Alaska Bank with Wesch, and charged off all the notes that you thought were bad as to the Washington-Alaska Bank in December, 1909? A. Yes, sir, we did.

Q. When the directors of the Fairbanks Banking Company declared this dividend upon the 12th day of April, 1910, did they do so upon the basis of the standing of the bank at the time of the closing of the books for the year ending December 31, 1909?

Mr. RIDER.—We object as leading.

The COURT.—State what it was based on.

A. On the close on December 31st of the fiscal year, in every instance.

(Testimony of R. C. Wood.)

Mr. McGINN.—Q. Is that also true in regard to the Washington-Alaska Bank?

A. Yes, sir, the profits. The expenses are all deducted from the revenues on December 31, 1909, and a balance of profit is placed in what they call the Undivided profit account. And a dividend was declared upon the showing of the Undivided profit account. [638]

Q. You were a member of the board of directors of the Washington-Alaska Bank? A. I was.

Q. I will ask you to state whether or not the Washington-Alaska Bank of Washington declared a dividend in April, 1910.

A. They declared a dividend in March or April.

Q. Who constituted the board of directors at that time?

A. There was Mr. L. L. James, Mr. Barnette, Mr. Wesch, Mr. Reeves and myself.

Q. Declared a dividend of \$50,000?

A. Of \$50,000.

Q. The Fairbanks Banking Company at that time owned all of the stock of the Washington-Alaska Bank. A. Yes, sir.

Q. To whom was this dividend paid?

A. To the Fairbanks Banking Company.

Q. The stockholders? A. Yes, sir.

Q. What disposition was made of this \$50,000?

A. \$25,000 was placed in the undivided profit account of the Fairbanks Banking Company, and \$25,000 was placed to the credit of the stock account.

Q. That is, the stock of the Washington-Alaska

(Testimony of R. C. Wood.)

Bank was depreciated \$25,000?     A. \$25,000, yes.

Q. What did the books from that time on carry the stock of the Washington-Alaska Bank for as long as you were there?     A. \$225,000.

Q. Why was that stock only depreciated \$25,000?

A. They considered that the Washington-Alaska Bank was worth that much at that time. [639]

Q. What was the book earnings or book value of the Washington-Alaska Bank at the close of the fiscal year of 1909?

A. After charging off their bad debts on that year, there was a book value of \$206,106.97.

Q. Did that take into consideration earned interest?     A. No, sir. It did not.

Q. Did you estimate, or can you approximate at all, and tell us, about what the amount of earned interest was on April 12, 1910, of the Washington-Alaska Bank, which was not carried as an asset?

A. I should think it would be \$25,000 or \$30,000. It might be more than that. I don't think it was any less.

Q. Would you say that you thought at that time that the bank was worth \$225,000?     A. Yes, sir.

Q. Was the \$25,000 of this dividend that you say was put into surplus and undivided profit account of the Washington-Alaska Bank—

A. Into the undivided profit account of the Fairbanks Banking Company.

Q. And that showed, then, how much to the credit of the undivided profit account of the Fairbanks Banking Company?

(Testimony of R. C. Wood.)

A. Well, the undivided profit account of the Fairbanks Banking Company shows on April 13th a credit of \$34,974.78.

Q. Upon what did the directors of the Fairbanks Banking Company declare a dividend?

A. On their undivided profit account.

Q. And what per cent did they declare at that time upon the outstanding stock?

A. Twenty per cent of the outstanding stock.  
[640]

Q. Do you remember what that amount was?

A. I think it was \$33,720.

Q. How much less than what the books showed upon the 13th was carried in the Undivided profit account of the Fairbanks Banking Company?

A. \$1,254.78.

Q. Less than what they carried in that account.

A. Yes, sir.

Q. Now, I will ask you, Mr. Wood, what was done at the meeting of the directors at the time that dividend was declared in determining whether or not they should declare a dividend.

A. Well, at that time I presented statements of the three institutions to the board of directors.

Q. Statements of what date?

A. Statements of December 31st, 1909. Told them that we had charged off what we considered bad debts that were in the banks, and that *their* remained in the undivided profit account something like \$34,000.



(Testimony of R. C. Wood.)

Q. And the directors thereupon declared the dividend.     A. Yes, sir.

Q. Have you got the statements of the three banks as of date December 31, 1909?

A. Yes, sir. (Produces papers.)

Q. Were those statements presented to the board of directors at that time?

A. Their statements were presented, or copies of them.

Q. At that time the Fairbanks Banking Company was carrying the Gold Bar Lumber Company at the sum of \$341,949.     A. Yes, sir.

Q. You were one of the directors.     A. I was.

Q. I will ask you to state whether or not at that time you [641] believed that Gold Bar was worth the sum of \$341,949?

A. We had no reason to believe any other way. We were submitted statements by the manager of the Gold Bar Lumber Company every month. Captain Barnette had come in from the outside with glowing reports of the concern. He said the timber was increasing in the neighborhood all the time.

Q. That it was increasing in the neighborhood?

A. That the value of timber was increasing in the neighborhood.

Q. You had received communications from outside people, too, had you, in regard to it?

A. Yes, sir. We had received communications from Dexter Horton Company; and I think the National Bank of Commerce advanced credits

(Testimony of R. C. Wood.)

against Gold Bar in excess of \$300,000.

Q. Did they have any security other than the Gold Bar stock?

A. Not that I know of.

Q. Can you tell me the amount that Dave Yarnell, who was one of the directors, had upon deposit on the 12th day of April, 1910?

A. On the 12th day of April, 1910, Dave Yarnell had \$142,325.10.

Q. With the Fairbanks Banking Company?

A. With the Fairbanks Banking Company.

Q. How much did the Jessons—John A. Jesson was a member of the board of directors—How much did the Jessons have upon deposit at that time?

A. L. N. Jesson had \$9,696. The Jesson Brothers had \$922.76. Jesson & Conrad had \$1,147.16.

Q. That is in the ordinary account.

A. They had savings accounts too.

Q. What did they have in the savings account?

A. I don't know where the savings books are.

[642]

Mr. McGINN.—I would like to have that book.

Mr. RIDER.—Have you them, Mr. Stewart?

(Mr. Stewart goes after books required.)

Mr. McGINN.—Q. How much did E. T. Barnette have on deposit at that time?

A. He had about \$292,000.

Q. Would that include his special deposit of \$200,000? A. Yes, sir.

Q. How much did John L. McGinn have to his

(Testimony of R. C. Wood.)

credit on that date?

A. In his current account or commercial account he had \$1511.29. There is savings accounts also.

Q. You haven't those here? A. No.

Q. C. J. Robinson. How much did he have to his credit on that date?

A. No, he didn't have anything at that time. He owed the bank \$184. On June 4th Mr. Robinson had \$4,653.33. On June 1st \$4,873.33.

Q. At that time you were carrying on the First National Bank. A. Yes, sir.

(Mr. Stewart returns and hands books to witness.)

A. On April 12, 1910, E. R. and L. N. Jesson had on deposit in the savings account \$65,561.03. On April 12, 1910, Mrs. L. N. Jesson had to her credit \$12,449.43 in the savings account. On April 12, 1910, John L. McGinn had on deposit in the savings account \$60,000.

Mr. McGINN.—I desire to read in evidence a portion of the minutes of the meeting of the board of directors of the Fairbanks Banking Company held upon the 12th day of April, 1909 (Reads): [643]

“Fairbanks, Alaska, April 12, 1909. Regular monthly meeting of the board of directors of the Fairbanks Banking Company was held at the office of the corporation at Fairbanks, Alaska, at 8 P. M. E. T. Barnette, president, presiding. B. R. Dusenbury, secretary, present. Members present: Claypool, Robinson, Brumbaugh, Hill, Barnette, Jesson, Yarnell and Peoples.

(Testimony of R. C. Wood.)

Discussion as to the advisability of selling the Gold Bar property was had in full and it was the sense of the meeting that the same be sold for \$450,000, with \$100,000 cash payment, and the balance payments at \$50,000 every three months until paid. The officers were instructed to so advise Mr. Armstrong, manager, and advise also that it is desirable that he place the property in the hands of responsible timber land agent for disposal."

Now, I desire to read from the minutes of the board of directors of August 12, 1909 (Reads):

"Fairbanks, Alaska, August 12, 1909. Regular monthly meeting of the board of directors of the Fairbanks Banking Company was held at the office of the corporation, at Fairbanks, Alaska, at 8 o'clock P. M.

E. T. Barnette, president, presiding. B. R. Dusenbury, secretary, present. Members present: Robinson, Hill, Brumbaugh, Ryan, Barnette.

A communication from Gold Bar Lumber Company dated July 24, 1909, enclosing monthly report of June, was read and ordered filed. A telegram from the same company, under date August 12, 1909, referring to sale of Gold Bar property and asking for price and terms was read and ordered filed. The board discussed the Gold Bar Lumber [644] Company's affairs quite fully and decided upon the price and terms as follows: \$340,000 for our undivided four-fifths interest in the property on the following terms,—\$50,000 down, and the balance in

(Testimony of R. C. Wood.)

\$25,000 payments every 60 days until paid, bearing interest at the rate of six per cent per annum. This offer to be made on condition that it be accepted within thirty days."

I desire next to introduce a portion of the minutes of the Fairbanks Banking Company of September 13, 1909 (reads):

"Telegram dated September 10, 1909 regarding sale Gold Bar Lumber Company property was read. Our wires to Gold Bar Lumber Company during August, 1909, regarding the same matter were read. "

Q. Now, Mr. Wood, it appears from some notes that were introduced in evidence here that upon the 12th day of April, 1910, three notes were executed by the Fairbanks Banking Company in favor of Dexter Horton Company for the sum of \$150,000.

A. Yes, sir.

Q. I will ask you to state whether or not that was for a loan that was obtained by the Fairbanks Banking Company from the Dexter Horton Company upon that date.

A. No, it was not. The notes were given for the purpose of covering an overdraft that the bank might have from that date until this bullion arrived there in Seattle.

Q. Was it customary to do that in the spring of the year? A. Yes, sir.

Q. Why? Explain that.

A. They were dealing with national banks on the outside, and national banks do not like to carry an

(Testimony of R. C. Wood.)

overdraft. And that [645] is about the only way it can be handled. They must have some evidence from the bank itself of its indebtedness.

Q. Why is it necessary for the bank here to have an overdraft out there at that time of year?

A. That is the time that the bullion is in transit, and they are drawing heavily on their exchange. From the 1st day of May, or from the cleanup in the spring, until almost the 1st of July the bullion is in transit, and that is the time when the greatest amount of business is being transacted on the outside; that, and the fall of the year.

Q. You buy your bullion here?

A. We buy our bullion here and ship it.

Q. And then draw—(Interrupted.)

A. Draw against it.

Q. And they desire notes to cover?

A. The bank examiners complain of overdrafts, and these notes are taken to do away with the overdrafts.

Q. That was given to the Washington Trust Company instead of Dexter Horton Company.

A. That \$150,000 worth of notes?

A. Yes.

A. Yes. I believe they were.

Q. The same rule applied to them as to the national banks?

A. The business of the Washington-Alaska Bank and the Fairbanks Banking Company was afterwards taken over by the Dexter Horton Bank.

Mr. McGINN.—I desire to read from the minutes



(Testimony of R. C. Wood.)

of the Fairbanks Banking Company of date January 12, 1910, as follows (Reads):

“A letter from the Gold Bar Lumber Company under date of November 27, 1909, was read and ordered filed, together with the October statement and trial balance.” That October statement is already in evidence. [646]

Q. Mr. Wood, if you didn't have that credit there, what would you have to do?

A. Well, we would have to put up security here.

Q. So, if you didn't have the credit there, what would you have to do in the way of meeting your drafts?

A. I don't quite understand you. If we didn't have a credit?

Q. If you didn't have a credit out there at that time of the year, didn't have any money on deposit, what would you have to do?

A. You couldn't issue exchange against it.

Q. Would you have to ship money out to meet your exchange? A. Certainly.

Q. What would that cost?

A. It costs now \$5.00 a thousand.

Q. What did it cost then?

A. It cost a little more then, or about the same. I don't think the express rate has changed much in the last couple of years, for shipping it out either by express or registered mail, and I think the insurance was about 35 cents a hundred at that time.

Q. Then you would have to ship money back here again?

(Testimony of R. C. Wood.)

A. Yes. We would have to ship money here again.

Q. I will ask you if it was the custom of the banks here to carry past due paper?

A. Yes, it is and has been, was up until about two years ago.

Q. It is still the custom, isn't it?

A. Yes, to a greater or less extent it is. Where an operator comes in with a cleanup there is usually past due paper against the cleanup at the time.

Q. Because paper is past due, do you regard it as bad? [647]

A. Not at all, no, sir. The national bank examiners do not regard it as bad.

Q. They do not? A. No, sir.

Q. Do you carry any past due paper in the First National Bank?

A. When Wilcox was here we had \$14,000 worth of past due paper, and he never criticized it.

Q. How was it when Goodheart was here?

A. When he was here we had considerable more, and he did ask us to collect in some of the paper at that time.

Q. I will ask you to state whether you collected all of that past due paper that you had at that time?

(Plaintiff objects as immaterial; objection sustained.)

Mr. McGINN.—That is all for the present.

Cross-examination.

By Mr. RIDER.—Q. Mr. Wood, you stated on your direct examination that the power of attorney that you gave to Mr. Hill was executed in 1906 for

(Testimony of R. C. Wood.)

certain purposes, to be exercised by him in the organization of a company on the outside—in Seattle.

A. Well, I stated that I thought that was the purpose of the power of attorney at that time.

Q. Do you still think that?     A. Yes, sir.

Q. Do you know how your interest in the partnership was transferred to the corporation?

A. The manner that it was transferred?

Q. Yes.

A. It was transferred by an assignment.

Q. Do you know who executed it on your behalf?

A. No. I do not.

Q. There was some real estate, an interest in some real [648] estate, transferred to the corporation, was there not, by deed?

A. I believe there was.

Q. Do you know who executed that in your behalf?

A. No, sir, I do not.

Q. Is it not a fact that on March 16, 1908, Mr. Hill, acting under this same power of attorney to which you have referred, executed the instrument of your interest in the partnership to the corporation?

A. I don't know. I never looked it up.

Q. Did you ever execute any instruments for that purpose?     A. I don't think that I did.

Q. They were conveyed to the corporation, were they not?     A. They undoubtedly were.

Q. The only way they could be conveyed was by you, or Mr. Hill acting under that power of attorney, wasn't it?

A. No. They could be conveyed by an assign-

(Testimony of R. C. Wood.)

ment. It was property that belonged to the partnership.

Q. Who executed the assignment in your behalf?

A. I don't know. I signed the assignment myself.

Q. Are you sure about that?

A. I think so. I think I did.

Q. Here is an assignment dated March 16, 1909, purporting to convey certain property to the corporation. Is not that assignment executed in your behalf by Mr. Hill under the power of attorney, and conveying certain mortgages? (Hands instrument to witness.)

A. Yes. That was property that was held by the partnership to secure loans. [649]

Q. That is the property I am talking about?

A. Yes, sir.

Q. Your interest in the property that was held by the partnership was transferred to the corporation by Mr. Hill, acting under the power of attorney that he had from you executed in 1906?

A. Yes, sir, that was the bank business.

Q. The bank is the partnership?

A. The bank is the partnership, but it was carried as loans and discounts of the bank on the books of the bank at that time.

Q. Your interest in that property described in that assignment was conveyed to the corporation by Mr. Hill acting under the power of attorney, was it not?

A. My interest was the bank's interest. It was merely taken in my name to secure a loan at that time.

(Testimony of R. C. Wood.)

Q. All right. And the act of conveyance from you was had by Mr. Hill acting under that power of attorney.

A. Yes, sir. Mr. Hill and myself had each other's power of attorney. Sometimes a mortgage would be given in Hill's name, and sometimes a mortgage would be in my name. We gave each other power of attorney for the purpose of releasing these different mortgages that were the bank's affair. The bank was a partnership, and we could not take a real estate mortgage in the name of the Fairbanks Banking Company, a partnership. It had to be in the name of one or the other of the firm.

Q. And the power of attorney that you gave to Mr Hill was the one dated in 1906?

A. I think he has two.

Q. Has he ever recorded them both?

A. I don't know.

Q. Don't you know the only one he has ever recorded is the one that is introduced in evidence here?  
[650]

A. I don't know.

Q. Then on March 16th, 1908, Mr. Hill was acting under a power of attorney from you?

A. Mr. Hill had my power of attorney, yes, sir.

Q. Coming down to the time when you were elected manager of the three banks in the fall of 1909, I believe you stated that on December 31, 1909, all of the loans and discounts were prepared on a list and brought to you by Mr. Wesch and Mr. Jackson.

A. Yes, sir.

(Testimony of R. C. Wood.)

Q. Showing the loans and discounts of those two banks.

A. Yes, sir. I asked them to submit to me a list of the notes they considered bad in each of the institutions at that time, and we would charge them off.

Q. The notes they considered bad? A. Yes, sir.

Q. Was that all that was the lists, just the notes that they considered bad?

A. Yes, sir, on the lists they submitted to me.

Q. They didn't submit to you a list of all the loans and discounts—a complete list? [651]

A. I had a record, a complete list of the loans and discounts.

Q. You had them independently of them?

A. Yes, sir. I had this record here (indicating book).

Q. On December 31st when you made your charge off of bad notes, did you refer to the complete list that you had, or simply to the lists which Mr. Jackson and Mr. Wesch prepared for you?

A. I had the notes of the different banks at that time pretty well in mind, and I don't believe that I referred to any other—(interrupted).

Q. It was your judgment also that the notes enumerated on their lists were the only bad notes held by the two banks on that date?

A. It was my judgment on that date, yes, sir.

Q. That was based upon a careful examination of the paper held by the two banks.

A. Yes, and based upon investigations that I had Mr. McCormick make of the different mining plants



(Testimony of R. C. Wood.)

and machinery that the bank owned at that time.

Q. You attempted to inform yourself by other means than your own investigation as to the amount of bad paper in the banks.     A. Yes, sir.

Q. On that date, December 31, 1909.

A. Yes, sir.

Q. Did you charge off on that date for the Washington-Alaska Bank how many dollars? \$8,599.59, was it not?

A. I think there were some items charged off previous to that.

Q. That is the amount you stated.     A. \$8,599.59.

Q. That was the total amount of bad debts carried by the Washington-Alaska Bank on that date.

A. The amount we considered.

Q. The amount you considered bad.

A. Yes, sir. [652]

Q. You also on that date charged off the total amount of paper that you considered bad of the Fairbanks Banking Company.

A. That we considered bad, you say?

Q. Yes.     A. I think so, yes, sir.

Q. And that was done upon the same careful examination and investigation, was it?     A. Yes, sir.

Q. And determined to be \$23,514.39.

A. Yes, sir.

Q. Did there remain in any of the banks any paper that you considered bad at that time?

A. As I said, yes, sir, there was some paper there that might have been unsatisfactory at that time.

Q. What do you mean by that, doubtful?

(Testimony of R. C. Wood.)

A. It might have been doubtful, but we had security which we were waiting to realize upon.

Q. That was all that you considered bad.

A. I think that was, Mr. Rider.

Q. Now, how much did you say that the earned interest on the paper of the Washington-Alaska Bank amounted to on that date?

A. I say I wouldn't be sure, but I think it was over twenty or twenty-five thousand dollars.

Q. Considerable in excess of the bad paper.

A. Well, I think it would be about a stand-off.

Q. You think the bad paper and the interest would be about a stand-off?      A. I think so.

Mr. McGINN.—Q. You have only charged off about \$9,000 of bad paper, and you had no more bad paper after you charged that [653] off, and you had \$27,000 accumulated interest.

A. I misunderstood the question.

Mr. RIDER.—I am talking of the Washington-Alaska Bank, and I think my question was directed to that. Read that question.

(Question read as follows: "Q. Now, how much did you say that the earned interest on the paper of the Washington-Alaska Bank amounted to on that date"?)

Is that the way you want your answer; that the bad paper would be about a stand-off with the earned interest that didn't appear on the books as an asset?

A. The idea was this: We went over those lists. He submitted the list, and I asked Wesch if he thought that was all the bad paper of the Washing-

(Testimony of R. C. Wood.)

ton-Alaska Bank, and he said he thought it was, and I had had investigation made by McCormick, and we came to the conclusion that, while there was other paper there that might not be as satisfactory as we would like to see it, it was secured, and that we considered that we had wiped out all that was necessary at that time.

Q. Did you consider that there was bad paper there equivalent to the amount of earned interest which didn't appear on the books of the bank as an asset?

A. Did I think there was bad paper equivalent to the earned interest?

Q. To this amount of \$27,000.

A. I don't think I did. That is a long time, but I don't think there was at that time.

Q. You testified as a witness at Valdez in the trial of the criminal cases against E. T. Barnette and L. E. Wing, did you not? A. Yes, sir. [654]

Q. And in those criminal cases your testimony was taken down by a stenographer, was it not?

A. I don't know.

Q. Was there not a stenographer in the court reporting that proceeding? A. I think there was.

Q. You know Mr. Heimburger, the stenographer there at Valdez? A. I believe I do.

Q. Didn't he report the proceedings?

A. I think he did.

Q. In those cases, being numbered 334 and 37 of the United States versus E. T. Barnette and L. E. Wing, you were questioned respecting the quantity

(Testimony of R. C. Wood.)

of bad paper in the Washington-Alaska Bank and in the Fairbanks Banking Company on December 31, 1909, were you not?

A. I believe that I was examined regarding certain individual notes at that time.

Q. Were you not examined respecting the amount that was charged off, of the bad paper at that time, and why more was not charged off?

A. I think that was in regard to the Fairbanks Banking Company.

Q. Of the Washington-Alaska Bank?

A. I don't remember. If you have the testimony there—

Q. You were offered in that case by the Government as a witness?

A. I was subpoenaed by the Government.

Q. And you were cross-examined by Mr. Fink, the attorney for the defense? A. I believe I was.

Q. In your cross-examination were you not asked these questions, and did you not make these answers, referreing to [655] the charging off of bad paper? (Reads):

“Q. On the 31 day of December of the same year, being 1909, you went over the notes, did you not?

A. I went through them prior to that.

Q. But on the 31st day of December you segregated out what you actually considered bad paper and wrote that off?

A. The way that was done; Mr. Wesch was manager of the Washington-Alaska Bank, and Mr. Jackson of the Fairbanks Banking Company. We asked

(Testimony of R. C. Wood.)

them to make up a list of the loans that they considered bad at that time, and they did, and we charged them off.

Q. And you then included all the loans which in the opinion of you gentlemen it was proper in banking to charge off as bad paper.

A. I wouldn't say that.

Q. What proportion? You charged off \$26,000?

A. Yes.

Q. Why didn't you charge off all of it?

A. To tell you the truth, we didn't think the profits were there to charge it against."

Mr. McGINN.—You are referring to the Fairbanks Banking Company.

Mr. RIDER.—Very well, the Fairbanks Banking Company. You gave that testimony?

A. I did.

Q. And you didn't think the profits were there to change the notes against.

A. That is the book profits at that time. That is exactly what I understood.

Q. You didn't charge off all the bad paper of the Fairbanks Banking Company on December 31, 1909?

A. I say there was some paper that might have been unsatisfactory in the assets. There were others that if we could realize on would more than offset that together with accrued interest.

Q. You didn't charge off all that you considered bad? A. That was our intention. [656]

Q. Didn't you state here that you did not, and that the reason you did not was because there were no

(Testimony of R. C. Wood.)

profits to charge it against?

Mr. McGINN.—What he said there is before the Court.

The COURT.—No, I don't consider that is before the Court.

Mr. RIDER.—Q. You said what I have read here?

A. Yes, sir, I did.

Q. And did you not further state, after you had answered that you didn't think the profits were there to charge it off against? (Reads):

"A. December 31, 1909, I think we charged off all the bank could stand at that time, the earnings of the bank itself, or most all of it."

That was your testimony at Valdez.

A. I don't remember. If that is down there, that is my testimony.

Q. Will you say that you did or did not give that testimony?

A. At that time when I was testifying, I had no record of any kind before me at all. Here I have the records showing the securities on all the different paper at that time. It makes a difference when you are testifying from memory and when you have the records before you.

Q. You knew at that time whether you had charged off all the earnings that that bank could stand or not, didn't you? [657]

A. It was merely a matter of opinion at that time with me. You take a bank that fails, and five years afterwards you come back and ask questions of that kind and you might answer one way, but when you



(Testimony of R. C. Wood.)

are confronted with other evidence showing the securities on the records of the bank it places an entirely different light on it.

Q. Did you offer that as an explanation at Valdez?

A. No, I wasn't asked that question.

Q. You stated there as a positive fact that you charged off all the profits would stand.

A. I gave that as my opinion.

Q. Your testimony was given at Valdez when?

A. It was given in Valdez in December, 1912.

Q. Now, referring to the Washington-Alaska Bank, were you not asked these questions on cross-examination by Mr. Fink? You remember, do you not, that Mr. Fink examined you respecting the amount of accumulated profits on the notes?

A. I do.

Q. Which didn't show on the books?

A. I don't remember that, but he might have examined me about that.

Q. And did he not conduct this examination with you (Reads): "Q. Referring now to the Washington-Alaskan Bank. Then there was \$22,000 of earned interest which had not been paid in? A. And that much more bad debts. Q. I am talking about the book value. That was \$22,000 due if that was properly charged as book value? A. I don't think so, because you figure interest on bad debts. It was done in that case. I don't think it would have anything to do with the book value of the bank." Did you give that testimony?

A. I presume I did. As I say, I had no records

(Testimony of R. C. Wood.)

before me, and [658] here I have them all. And when you have the records before you, you can recollect and remember things that you can't do when you don't have them before you.

Q. Were you not asked these questions by Mr. Corssley, and gave these answers, referring to the same transaction. (Reads): "Q. You do know something about the bad notes carried by that bank?

A. I did. After the time of its purchase, I did.

Q. While you were advisory manager? A. Yes.

Q. And you know they exceeded any \$22,000 of interest that had accumulated as Mr. Fink states.

A. The bad and doubtful notes did." Did you give that testimony?

A. Well, I presume that I did. At that time, as I say, I had no securities there and no record of any securities on these notes, while to-day this book is the record of all those securities.

Q. These books were at Valdez at that time?

A. I never examined them.

Q. You never examined them?

A. I didn't. I don't know whether all of them were there.

Q. You didn't ask to examine them, did you?

A. No.

Q. You undertook to speak from your recollection? A. Yes, sir, from my recollection.

Q. Now, you stated that on April 12, 1910, when the Fairbanks Banking Company declared this dividend, it was carrying on its books, as one of its assets, the capital stock of the Washington-Alaska

(Testimony of R. C. Wood.)

Bank? A. Yes, sir. [659]

Q. In what amount? A. \$225,000.

Q. That is after the dividend had been declared?

A. Yes, sir.

Q. Prior to the time the Washington-Alaska Bank dividend was declared and paid or taken credit for by the Fairbanks Banking Company, the stock of the Washington-Alaska Bank was carried at \$250,000?

A. Yes, sir.

Q. Which was the purchase price of that stock?

A. That was the purchase price. Yes, sir.

Q. Then, after the dividend had been declared by the Washington-Alaska Bank, and when the Fairbanks Banking Company had declared its dividend, they reduced the Washington-Alaska Bank stock to \$225,000? A. Yes, sir.

Q. Now, you said something about the value of that stock. I don't think I got your answer.

A. On April 12th?

Q. Yes, if that was the time you were testifying about.

A. I said I considered that the directors thought that the value of the Washington-Alaska Bank stock was about \$225,000.

Q. More than one of the directors?

A. Yes, sir.

Q. What did you consider it worth?

A. Well, I considered it the same as the other directors.

Q. You considered it worth \$225,000?

A. Yes, sir.

(Testimony of R. C. Wood.)

Q. On April 12, 1910?      A. Yes, sir.

Q. What did you consider it worth on December 31, 1909?      [660]

A. Well, I thought it was worth \$250,000.

Q. What do you think it was worth in September, 1909, when they bought it?

A. Well, I think it was worth that amount.

Q. You think it was worth \$250,000?

A. Yes, sir, and I think other men will say the same thing.

Q. Your testimony respecting that matter was given by you in the Barnette cases, was it not?

A. I testified that I thought they paid \$75,000 too much for it.

Q. When you gave your testimony at Valdez you testified that you thought they paid \$75,000 more than it was worth, didn't you?

A. I don't remember about that.

Q. Let us see. Let me read the quesitons and answers. This is a question on direct examination by Mr. Crossley (Reads):

“Q. You knew what had been paid for the Washington-Alaska Bank?      A. I did.

Q. As a conservative banker, would you have paid \$250,000 for it?      A. I certainly would not.”

You gave that testimony, did you not?

A. I don't remember that.

Q. There were some objections and interruptions following that, and then continuing (Reads):

“Q. It was purchased in September, 1909. What was its value then? What was it worth then?

(Testimony of R. C. Wood.)

A. That is a pretty hard question to answer. If you take the actual book value of the bank, and give nothing for its good will, the value of that bank at that time—and charge off its bad debts—would have been I think, about to the best of my recollection, not over \$175,000. I doubt whether it would have brought that much if it had been liquidated at that time.

Q. In other words, they paid \$75,000 more than it was worth, in your opinion?

A. That has always been the way I felt about it.”  
[661]

A. You must understand that the Washington-Alaska Bank had quite a name and reputation in this country. The goodwill of that bank was worth considerable at that time.

Q. You knew all that when you were testifying at Valdez?

A. I probably didn't look at it in that way.

Q. Why didn't you?

A. I don't know why I didn't. I don't suppose I was asked that question or a question that would bring me to remember that.

Q. Do you mean that the question of the value of that bank is now being looked at by you from a different standpoint from what it was at that trial?

A. Well, I don't know.

(Defendants object to the question as being unfair. Overruled.)

Q. You had completed your answer when you said you didn't know?

(Testimony of R. C. Wood.)

A. It is a pretty hard proposition. Let me understand your question.

Q. Read the question. (Question read as follows: "Do you mean that the question of the value of that bank is now being looked at by you from a different standpoint from what it was at that trial?")

A. Well, I have talked over since that time with quite a number of men the condition of that bank at that time. It had over eighteen hundred thousand deposits and seventeen hundred thousand cash on hand. It showed a book value of \$206,000, in addition to any interest it might have earned on its accrued interest. And I have talked it over with men who knew something about that, and in their opinion they have told me that if that bank had fifty thousand dollars worth of bad debts that they would consider it worth \$250,000.

Q. You are a banker, are you not?      A. Yes, sir.  
[662]

Q. How long have you been in the banking business?

A. I have been in the banking business in Fairbanks for nine years or ten years.

Q. You knew the banking business before you talked with these men that you are referring to?

A. Yes, sir.

Q. You had been manager of the three banks, including the Washington-Alaska Bank?

A. After the purchase I was.

Q. For some six months?      A. Yes, sir.

Q. You were the manager of it?      A. Yes, sir.



(Testimony of R. C. Wood.)

Q. The affairs of that bank were submitted to you, as you testified, regularly by its officers?

A. I saw a statement of that bank every day.

Q. You met with the officers in consultation respecting that bank?      A. Yes, sir.

Q. That all occurred prior to the time you testified at Valdez, did it not?      A. Yes, sir.

Q. Again referring to the dividend declared by the Fairbanks Banking Company, was not one of the purposes in declaring that dividend to create a fund by which the past due notes of their stockholders could be reduced?

A. No, I don't think so. Now, in declaring that dividend it was estimated that there would be about one-half of the dividend—well, I forget how much—from ten to fifteen thousand dollars that would go into the bank, that is, the bank wouldn't pay out more than ten or twelve thousand dollars, or half the dividend. That was my [663] recollection. I have not examined that recently, but that is the best of my recollection.

Q. What would be done with the remaining half of it?

A. The remaining half would go into the bank itself.

Q. In what way?

A. In the way of interest and in the way of applying it on notes that the then stockholders had in the bank.

Q. One of the purposes was to reduce the amount of those notes by the application of the profits of the

(Testimony of R. C. Wood.)

bank through the medium of the dividend.

A. I don't think that was the purpose of the dividend at all.

Q. Didn't you give this testimony in those same cases? (Reads):

"Q. Do you know why that dividend was declared by the Fairbanks Banking Company?

A. Well, I presume they thought it was a profit dividend; that they had a right to declare it. And there was a great many notes owed to that bank by stockholders of the bank. A discussion arose that the declaring of the dividend would reduce the indebtedness of these stockholders to the bank. Of course, there was some stockholders that didn't owe the bank anything."

Q. You gave that testimony, did you not?

A. I think so.

Q. As a matter of fact, the dividend, although declared on the 12th of April, was not distributed I believe the books show, until the 15th.

A. I think some of it was paid on the 13th, was it not? Maybe not until the 15th.

Q. I think the testimony of Mr. Stewart was that the first was paid out on the 15th.

A. I know that some of that dividend remained in the bank for a year or more.

Q. Your attorney introduced in evidence here testimony concerning [664] the amount of earned profits of the bank on April 16, 1910. Do you not remember that?

(Testimony of R. C. Wood.)

A. I remember that he had Mr. Stewart's figure over the profits.

Q. On that date of April 16, 1910?

A. Yes, sir, showing about \$45,000.

Q. \$45,000 increase of profits?      A. Yes, sir.

Q. And that all arose from the application of dividend on past due notes, did it not?

A. I wouldn't say that all of it did, but the greater portion of it did.

Q. Now, coming to these notes that are shown on the list of April 12, 1910, which were past due on that date and were never paid, respecting which Mr. McGinn inquired of you?      A. Yes, sir.

Q. Of the notes that he called your attention to, I think you gave it as your opinion that it was your honest belief that on April 12, 1910, every one of them were good?      A. No. I didn't say that.

Q. Of those that he called your attention to?

A. I said on December 31, 1909, we charged off the notes we considered bad.

Q. Yes. And isn't this the amount that was due on the notes on April 12, 1910, that he was inquiring about?

A. The amounts? That was taken from this book here (Indicating.)

Q. Now, I believe—taken from what book?

A. From this record book.

Q. That is the securities you read from that book?

A. Yes.

Q. And the list was a list that Mr. McGinn had which he read to you and included notes of April 12,

(Testimony of R. C. Wood.)

1910. You knew that?

A. Yes, sir. That was the notes that I called off the [665] securities from that book.

Q. You understood those were the notes held by the bank on April 12, 1910? A. Yes, sir.

Q. You also understood that every one of those notes which Mr. McGinn listed to you was past due on April 12, 1910, did you not? A. Yes, sir.

Q. Some of them past due as much as two and three years, were they not?

A. I believe they were, yes, sir.

Q. You thought that there was ample security in the possession of the bank on April 12, 1910, to have collected every one of those notes which he called off to you?

A. I didn't say that they could be collected on April 12, 1910.

Q. When did you intend to be understood to say that they could be collected?

A. That would depend.

Q. On what? A. On conditions.

Q. What kind of conditions?

A. If a note was secured by a plant of mining machinery, I don't suppose you could go out on April 12, 1910, and sell it. But the value existed in that plant of mining machinery just the same. If you had a plant on Vault Creek, a 20 horse-power plant, and the bank had a mortgage on that plant, it might not have been to the best interests of the bank to try to sell it at that time and move it into town. It might have been that a little later someone would

(Testimony of R. C. Wood.)

come along and work the claim adjoining that claim, and the bank could sell it then to much better advantage. [666]

Q. You were working on pure chance?

A. No. It is not a chance. Mining machinery and the securities I read off this morning have got a value, and have a value to-day.

Q. When you leave it to what might have been, it is pure chance.

A. You have to take into consideration that if you have a 50 horse-power boiler to-day you might not be able to get \$100 for it, but that doesn't show that that 50 horse-power boiler isn't worth seven or eight hundred dollars.

Q. As security?      A. As security.

Q. For a note—      A. For a note.

Q. Although you can't get but \$100 on it?

A. To-day.

Q. And your note is past due?

A. And your note is past due.

Q. And you are called upon to pass upon the value of that past due note to-day?      A. Yes, sir.

Q. And you say it is worth \$700 because it has got that boiler that you might get \$700 out of, although you can only get \$100?

A. If you go over to the hardware store and get a price on a 50 horse-power boiler now, they would probably tell you it would cost you a thousand or twelve hundred dollars. You have got to place your value upon that, taking into consideration the depre-

(Testimony of R. C. Wood.)

ciation between the second-hand plant and the new boiler.

Q. When you took these securities to secure these notes, you expected that the securities would be sufficient to respond for the amount due on the note at any time, did you not?

A. Not at any time. No, I didn't say that.  
[667]

Q. I know you didn't say it, but that is the intention when you take securities.

A. Well, there are several things to take into consideration.

Q. Isn't that one of them that you take into consideration?

A. That you can liquidate the plant at any time, any moment?

Q. The security you take, you expect to be sufficient to liquidate and pay that note when it matures?

A. There might be other conditions.

Q. But at the time you take the security, isn't that the belief that is in your mind, that the security is sufficient?

A. Suppose there is a man on Goldstream who is working a lay. He has got a lay, and he has got pay. You think of loaning him \$1000; that his lay will pay that out. But, in order to secure yourself additionally, you take a mortgage on his plant, so that if it does happen that the man's lay doesn't turn out, you have that machinery to fall back upon.

Q. You are playing which, the lay or the machinery? A. You are playing both.



(Testimony of R. C. Wood.)

Q. For your security?

A. And you are playing an asset of that man's note, when he signs the note.

Q. The lay is nothing but a speculation?

A. A speculation, but all of this country here is speculative.

Q. You consider that sort of security which you acknowledge to be purely speculative, as a sufficient security for notes?

A. I didn't say that mining machinery was speculative. It always has some value.

Q. Your lay is speculative?      A. Yes.

Q. Very largely so?

A. In some instances it is, and sometimes it is not. A man [668] takes a lay on a piece of mining ground. He goes out and prospects it and finds pretty good pay. I don't think it is much more speculative than lots of other business deals that the banks have to go into.

Q. Let me call your attention to the note of Charles W. Kellogg respecting which you testified.

A. Yes, sir.

Q. Being number 625.      A. Yes, sir.

Q. That note is in the sum of \$717—the principal amount. It is dated September 19, 1907, and was due on or before May 1, 1908?      A. Yes, sir.

Q. What security did you have for that note on April 12, 1910?

A. Well, to the best of my recollection, and according to this record—(Opens book) there was an interest in 1 Above on Engineer Creek.

(Testimony of R. C. Wood.)

Q. See what the record shows about it.

A. It shows there was a mortgage on an undivided one-quarter interest in 1 Above, first tier, left limit, Engineer, and assessment work for 1910 done by laymen. The amount carried at that time was \$625.

Q. And it was sufficient to secure this note of April 12, 1910? A. To show you—(interrupted).

Q. Answer the question.

A. I considered it so.

Q. And the note was due on May 1, 1908?

A. May 1, 1908.

Q. Why didn't you collect it?

A. Because the laymen couldn't pay it at that time.

Q. You had the security? A. Yes, sir.

Q. Why didn't you collect it? [669]

A. You don't like to take the property of the men away from them when they are working on the ground.

Q. They were running a benevolent institution over there?

A. Mr. Parkin loaned \$800 on that interest, and took a second mortgage. The bank had a first mortgage and he took a second mortgage. We had \$1100 or \$1200 on that interest, and Mr. Parkin loaned them \$800 more, and took a second mortgage. That is the confidence he had in that property at that time, and I think to-day that property might be sold for that amount of money. There might be a million dollars in that property.

Q. And there might not be anything.

A. Yes, sir. But here was a piece of property be-

(Testimony of R. C. Wood.)

ing worked and operated, and the property adjoining it was turning out and had turned out to be rich.

Q. And he had not made enough out of it in two years to pay a note of \$700?

A. I don't think the ground was worked for two years. Mr. Parkin thinks enough of the ground to do \$50 or \$100 worth of assessment work every year.

Q. You think you would prefer to take your chances on being able to collect this sometime in the future rather than press the borrower?

A. In banking, the bank don't run its business for the benefit of its borrowers, but there are many things to take into consideration. A bank must help the community the best that it can. If they have a loan on a piece of property, and the man is doing everything he can to make good, it is not the interest of the bank to take that property away from him as long as they feel that they are [670] secured. The security has never been reduced on that piece of property.

Q. *There never* a nickel paid on this note by way of interest or principal.

A. How much was that for?

Q. \$717.

A. My record shows that it was for \$625.

Q. Well, here in the note (Hands to witness).

A. That is including the interest.

Q. The principal of the note is \$717.00, isn't it?

A. The principal of the note was \$625. That was the amount carried in this record book.

Q. How long had you been carrying this loan before

(Testimony of R. C. Wood.)

you took this note?

A. The note is on the date that the loan was made.

Q. Where does this \$100 difference come in? The note really was for \$625, you say?

A. The interest was added to the principal. And you will find that the note bears interest after maturity, and I think it is a time note, probably due in 1908, and the interest was not payable until after maturity.

Q. And it matured May 1, 1908?

A. I think so.

Q. And had been past due from that time up to April 12, 1910? A. Yes, sir.

Q. And you had not done anything to collect it?

A. No, sir.

Q. And it was perfectly good?

A. I think it is good to-day.

Q. Do you want to buy it?

A. I don't know. I might take a chance. [671]

Mr. McGINN.—I object to that.

The COURT.—He has answered.

A. If you will allow me to explain conditions that exist. The First National Bank had a piece of paper last year of its own amounting to about \$1100. It was three years old. And we took security on a piece of mining property for that \$1100.00, in addition to other creditors. We didn't fall in with the ideas of the other creditors that that was the time to dispose of that property. We waited until this spring, and we sold it for over \$5,000.

Mr. RIDER.—Yes, and you won. You waited on

(Testimony of R. C. Wood.)

\$70,000 worth of paper, and did you win on this?

Mr. McGINN.—There is no evidence that they waited on any \$70,000 worth of paper.

Mr. RIDER.—He was manager of the bank and the stuff was past due.

The COURT.—Answer the question.

A. You have to exercise judgment in those things.

Mr. RIDER.—Q. Your attention was called to a note of Tharp & Rusk this morning. A. Yes, sir.

Q. I believe you stated that you considered that note perfectly good on April 12, 1910?

A. I believe I read the securities from the stock-book.

Q. The note you considered good, in connection with the securities? A. I think I did.

Q. As a matter of fact, had not the bank charged that note off to profit and loss on December 31, 1909?

A. I don't think that was the same note.

Q. You did charge off a note to profit and loss of Tharp & Rusk on December 31, 1909, did you not?

A. I think we charged off one. [672]

Q. Look at your profit and loss account and see if you did?

A. When you charge a note off to profit and loss, you don't give it up.

Q. I understand that. What I want to know is, why you charged off to profit and loss on December 31, 1909, the note of a man when you hold two of his notes, and say that the other note was good on April 12, 1910?

A. The security might not have been sufficient to

(Testimony of R. C. Wood.)

cover all these notes. Mr. Rusk since that time has gone to Iditarod, and I understand has made good down there.

Q. Did that same security secure both of these notes? A. Whenever a man—(Interrupted).

Q. Answer the question.

A. Whenever a man is indebted to the bank, and they have security, I think they have a right to apply those securities on any debt that that man might owe the bank.

Q. And the securities you held, you felt were insufficient to satisfy both of these notes, so you charged one of them off?

A. I presume we did, or we wouldn't have charged it off.

Q. The note of Ensor & Griffith, number 675.

A. Yes, sir.

Q. I believe you say that you believed that that note, with the security, was perfectly good on April 12, 1910.

A. I think that note is good to-day. I think 6 Above, on Fairbanks Creek, is worth that to-day.

Q. Do you know when the bank took judgment on that note? A. I do not.

Q. Don't you know they took judgment in 1909 on that note? A. I don't know.

Q. And that you had judgment on that at that time? [673]

A. My record shows we have a deed of it.

Q. Why didn't you cancel this note?

A. I don't know. I don't know whether they sur-



(Testimony of R. C. Wood.)

rendered the property for the purpose of cancelling the debt or not. I presume the deed was given for the purpose of stopping the expense of foreclosing the mortgage.

Q. Ray Brumbaugh had a past due note in the bank at that date? A. Yes, sir.

Q. And you say, with that past due paper in that bank, Ray Brumbaugh displayed checks of \$75,000 to you, and you didn't ask him to pay the paper.

A. No sir. I did not.

Q. Do you mean that you didn't say that?

A. I didn't say that.

Q. What did you say?

A. I said that in 1910 I saw \$75,000 worth of drafts drawn by the Miners & Merchants Bank of Iditarod on the Scandinavian-American Bank of Seattle in favor of Brumbaugh & Hamilton to the extent of \$75,000.

Q. What time in 1910?

A. After he came from the Iditarod in the winter of 1910 or '11.

Q. In May, 1910, these checks you say, had nothing to do with the value of the note.

Mr. McGINN.—He has not testified that he saw any checks in April or May, 1910.

A. Well, this much I will say: The firm of Brumbaugh & Hamilton were dealers in mining machinery, and they always carried an immense stock, and I think in the Iditarod they carried probably \$100,000 worth of stock at that time. These drafts that he showed me were for sales of machinery he had made

(Testimony of R. C. Wood.)

that year—revenues derived from his business in the Iditarod. [674]

Q. Was that note secured?

A. I think it was secured by Fairbanks Banking Company stock.

Q. Look at your book there.

A. That note to-day is in a different position than it was at that time.

Q. In a worse or better condition?

A. I think it is in a better condition.

Q. Hamilton was not on the note at that time?

A. No, sir.

Q. There was no one on the note but Ray Brumbaugh?

A. That is all. It does not say there was any security on that note in this book.

Q. This note is dated January 30, 1908, and due on or before 30 days.

A. Yes, sir; for the sum of \$7,762.50.

Q. Will you examine the indorsements on the note and tell me if there has been anything paid on that note by way of principal or interest prior to April, 1910? A. No, sir; there was not.

Q. There had not been a cent paid on it, had there?

A. No, sir. If you will look at the books of the Fairbanks Banking Company all that time you will find that the firm of Brumbaugh & Hamilton were indebted to the bank as high as fifty and sixty thousand dollars.

Q. Did they ever get to be in the credit of the bank?

A. I don't know. They were buying machinery

(Testimony of R. C. Wood.)

and shipping in goods. I presume they needed all of their cash taking care of their shipments.

Q. And you were carrying them along and not even collecting interest from them?

A. I don't know about that. [675]

Q. You didn't collect any interest on that note?

A. It doesn't appear that way.

Q. The interest payment that is made on this note is the application of this dividend you declared.

A. I think it is. But that note is not bad to-day. That note can be collected.

Q. Take the McMullen Brothers' note, number 2369. A. Yes, sir.

Q. That note was charged to profit and loss on December 31, 1909, was it not—this identical note?

A. I believe it was.

Q. Yet you say it was worth its face on April 12, 1910? A. I don't remember.

Q. Didn't you state that about the McMullen note?

A. I know that McMullen had property.

Q. Did you say his note was good on that date?

A. I believe I did. I believe it is good to-day.

Q. Why did you charge it to profit and loss?

A. Because it might not have looked so good at that time.

Q. Did it increase in value between December and April?

A. It might have been that this property on Dome Creek that was owned by him was producing at that time.

Q. It had increased between December and April?

(Testimony of R. C. Wood.)

A. Well, that is hard to say. I can't remember back five years.

Q. You knew from the fact that you charged that note to profit and loss that that was a hazardous loan?

A. Probably it might have been at that time.

Q. You knew it, or you would not have charged it to profit and loss?

A. Every note that is charged to profit and loss is not a dead loss to the bank. [676]

Q. If that note became good by April, 1910, and yet, having charged it once to profit and loss, why didn't you collect it?

A. I left the bank a week or two after that.

Q. You were there in April?

A. Yes, sir. But you can't collect anything in April. You can see to-day that the miners have not started to sluice up yet.

Q. Is that the only reason you can give me why it was not collected?

A. If I had it in my possession, I would have collected it.

Q. You had it in your possession up to April, 1910?

A. I had it from October, until the first of May, 1910, at a time when things are absolutely dead in this country—no cleanups going on at all.

Q. You authorized it to be charged off on December 31, 1909, did you not?

A. I presume I did. Yes, sir.

Q. Referring to the note of D. Fairburn, number 1688, I believe you said that that note was perfectly good in April, 1910.

(Testimony of R. C. Wood.)

A. I think that is good to-day.

Q. Your bank had started suit on that note prior to April, 1910?     A. Yes, sir.

Q. Do you know why that was not collected?

A. There were three men on that note.

Q. And you started suit?

A. And we collected three or four hundred dollars.

Q. Why didn't you collect all of it?

A. In April it is hard to collect those things.

Q. You had security for it?

A. We had security on mining machinery. Yes, sir. [677]

Q. There is no indorsement here showing anything collected in April?

A. No. I don't presume that there was.

Q. You started that suit in October, 1909, was it not?     A. I don't remember.

Q. And there is no further indorsement on this note until August, 1911?

A. I think that that suit was started for the purpose of attachment.

Q. To attach what?

A. Attach an account that one of the partners had in the Washington-Alaska Bank.

Q. For the purpose of collecting this note?

A. For the purpose of taking his balance that he had in the bank and applying it on the note.

Q. Did you get it?

A. They could have got it. They had possession of it.

Q. Did you apply it on the note?

(Testimony of R. C. Wood.)

A. I don't know. I left there after that.

Q. You spoke about Allberg being good.

A. Yes, sir.

Q. In April, 1910?

A. Yes, sir, and he is good to-day.

Q. Allberg had been adjudged a bankrupt in November, 1908, had he not?

A. I don't remember about that.

Q. You didn't know that?

A. I don't remember that.

Q. Right here in this court?

A. It might have been. It has been a long time ago. But I think Allberg is certainly worth \$32.50 to-day.  
[678]

Q. You charged that note to profit and loss in December, 1910, did you not? A. I don't know.

Q. Can you determine from the books whether you did or not?

A. I had nothing to do with the bank in December, 1910.

Q. You were asked about the Tanana Electric Company note. A. Yes, sir.

Q. You considered that a good note in April, 1910?

A. Yes, sir. I did.

Q. Did I understand the substance of your testimony correctly? If I did, it was to the effect that Chilberg had signed a paper and left it with the bank, which obligated the Scandinavian-American Bank to protect those advances. Is that correct?

A. Yes, sir. I will tell you my remembrance of it. When I was in Valdez last winter, I at first thought



(Testimony of R. C. Wood.)

I didn't know much about that order, that is, I couldn't remember it distinctly. And when I was in Valdez last winter, I talked with Doctor Cassels about it, and he remembered it very well. And since Mr. Hill has come back this year, we have talked it over, and I am convinced now there was such an order.

Q. You speak now of the statements that Mr. Cassels and Mr. Hill gave you?     A. Yes, sir.

Q. The information they gave you.     A. Yes, sir.

Q. Not from your independent recollection of it?

A. When things are brought to your mind, one thing brings back another, and it was a long while ago, and it has been brought back to me.

Q. The matter of your understanding of that transaction was called to your attention by the taking of your deposition [679] in August, 1912, was it not?     A. Yes.

Q. In the case of Noyes, receiver, against the Scandinavian-American Bank?

A. Yes, sir. There was a lawyer here at that time that took the depositions.

Q. Your deposition, among others, was taken for use in the suit that was brought to try and recover from the Scandinavian-American Bank?

A. Yes. I think I was busy in my office one day, and this lawyer called me out and asked me if I would come over and give my deposition.

Q. Who was that lawyer?

A. Mr. Corrigan, I think.

Q. Wasn't Mr. Roth there?     A. I think so.

(Testimony of R. C. Wood.)

Q. Your deposition was taken in behalf of the plaintiff, and Mr. Roth represented the plaintiff?

A. Yes, sir.

Q. The purpose of taking your deposition was to discover what you knew about that transaction at that time?     A. I presume it was.

Q. Didn't you in your examination, in substance testify that there never was any understanding, so far as you knew, that bound the Scandinavian-American Bank to protect those advances?

A. I don't think I said that, because the mortgage itself that was on record here would show.

Q. That mortgage was not made to the Fairbanks Banking Company, was it? *it made* to the Scandinavian-American Bank and made by the Tanana Electric Company.

A. Yes, sir; to the Scandinavian-American Bank.  
[680]

Q. The Fairbanks Banking Company was not a party to that mortgage?     A. No.

Q. Was there any arrangement between the Fairbanks Banking Company and the Scandinavian-American Bank that the Scandinavian-American Bank would protect those advances?

A. As I say, since I have talked it over with Casels and Hill, and going over the affairs of this transaction, I have come to the conclusion that there was.

Q. Is that just a conclusion on that proposition as a matter of reason?

A. Well, I think that the letters and telegrams

(Testimony of R. C. Wood.)

that have been shown me, brought this back to my mind.

Q. Were not these questions asked you, and these answers made, when you were examined by Mr. Roth? (Reads):

“Q. Were these advances made, as represented by these notes, at the instigation of the Scandinavian-American Bank? A. Not that I know of.

Q. Were they made at the instigation of J. E. Chilberg?

A. Not that I know of. They were made at the instigation of the management and directors of the Tanana Electric Company in Fairbanks.”

Q. Was that your testimony?

A. I presume it was at that time. I came out of my office and went over there on five minutes notice, and took that deposition.

Q. Your deposition comprised an examination of the books by you, did it not, respecting that matter?

A. No, sir, I didn't look into a single book. I was there for not over half an hour, I think, at that time, and I never saw a book, and no book was offered to me.

Q. Didn't you state in this examination that the men who were working for the Tanana Electric Company were needing their [681] pay?

A. Yes, sir.

Q. That the wires were down, and you couldn't communicate with Seattle to determine whether or not you should make the advances.

A. Well, now, I think this condition existed—(interrupted).

(Testimony of R. C. Wood.)

Q. Answer if you didn't state that.

A. Read that over again.

Q. That the reason you didn't communicate with the Scandinavian-American Bank at Seattle to determine whether or not you should make these advances was because the wires were down.

A. I think the wires were down at that time.

Mr. McGINN.—If that is the deposition he should be allowed to read it.

The COURT.—The witness may refer to the deposition, if he desires.

A. I said to-day that Mr. Richmond had taken a note for the balance due the Scandinavian-American Bank and had gone outside for the purpose of procuring this credit from the Scandinavian-American Bank to apply on that note, and, as I remember, I think the wires were down at that time and that these men—there had been contracts let out there with the Tanana Electric Company, and the contracts had been fulfilled, and these men were after their money.

Q. Didn't you give this testimony? (Reads):

“Q. As a matter of fact, there was never a thought upon the part of yourself or any other officer of the Fairbanks Banking Company, so far as you know, that would authorize you to charge either one of these loans to the Scandinavian-American Bank, was there, in the ordinary course of business?”

A. There was never any reason that these amounts should be charged to the Scandinavian-American Bank until we were instructed to do so from its officers. If a charge had been made to the Scandina-

(Testimony of R. C. Wood.)

vian-American Bank of these amounts at that time, and disbursed by the Fairbanks Banking Company, the books of the Fairbanks Banking Company wouldn't have been correct." [682]

Didn't you make that answer?

A. I think I did.

Q. There was not any reason to suspect that you should make these charges against the Scandinavian-American Bank until you were advised to do it?

A. Exactly. And it was not done. But the Scandinavian-American Bank advised to the extent of \$10,000 against them.

Q. A further question (reads):

"Q. And the Scandinavian-American Bank did not authorize you in the usual course of business, or in any other manner, to advance these sums on their credit to the Tanana Electric Company, that you know of? A. Not that I know of.

Q. As a matter of fact, you know that they did not.

A. I know that they refused to."

A. Well, that was after the transaction had all been made that the Scandinavian-American Bank refused, and have refused to do so until to-day.

Q. Why did you say that they had never to your knowledge authorized these advances to be made, and you now say that there was a certain letter or memorandum of some sort respecting it?

Mr. McGINN.—Is this the Scandinavian-American Bank?

Mr. RIDER.—Yes, sir.

WITNESS.—Read that again. (Question read):

(Testimony of R. C. Wood.)

“Q. As a matter of fact, there was never a thought upon the part of yourself or any other officer of the Fairbanks Banking Company, so far as you know, that would authorize you to charge either one of these loans to the Scandinavian-American Bank, was there, in the ordinary course of business?

A. There was never any reason that these amounts should be charged to the Scandinavian-American Bank until we should be instructed to do so by that bank or its officers. If a charge had been made to the Scandinavian-American Bank of these amounts at that time, and disbursed by the Fairbanks Banking Company, the books of the Fairbanks Banking Company would not have been correct.

Q. And the Scandinavian-American Bank did not authorize you in the usual course of business, or in any other [683] manner, to advance these sums on their credit to the Tanana Electric Company, that you know of? A. Not that I know of.”

A. You will see all the telegrams that the bank got with reference to these different credits, and they were all signed by Mr. J. E. Chilberg.

Q. Two of the advances that were made by you prior to the amounts that are in controversy were paid by the Scandinavian-American Bank, were they not? A. Yes, sir.

Q. Each time paid by telegraphic advice from them. A. From Mr. Chilberg.

Q. Representing the Scandinavian-American Bank?

A. The telegrams I do not think are signed by the



(Testimony of R. C. Wood.)

Scandinavian-American Bank, or by Mr. Chilberg for the Scandinavian-American Bank, but signed by Chilberg.

Q. Asking you to charge it against them, and take the Tanana Electric Company's note.

A. I think you will find that they say: Take draft and take note Scandinavian-American Bank and send here. J. E. Chilberg.

Q. In each instance they asked you to take a note payable to the Scandinavian-American Bank.

A. I don't remember, but I presume they did. I was outside when this last note was taken.

Q. When this last note was taken, that was not taken payable to the Scandinavian-American Bank.

A. No, sir.

Q. It was taken payable to the Fairbanks Banking Company. [684]

A. Exactly, because advances had been made, prior to taking these notes, by the Fairbanks Banking Company at Cleary, and the bank had received a telegram then from Chilberg to make no further advances to the Tanana Electric Company.

Q. You testified respecting the amount of undivided profits of the Fairbanks Banking Company on April 13, 1910, and gave the amount as \$34,974.78.

A. I called that amount from this register.

Q. That is the gross amount that you called, was it not?

A. It was the amount that was in the undivided profits account at that time.

(Testimony of R. C. Wood.)

Q. Will you turn to that account where you had that?

A. Yes. The banks carry all their revenues and expenses under one account, and on December 31, each year, those different accounts are carried into an undivided profit account, and this amount has been carried into the undivided profit account, December 31, 1909. That was April 12th, 1910?

Q. April 13, 1910. Tell me if that amount there of April 13, 1910, of \$34,974.78 is not a gross amount.

A. Yes, sir, that is the undivided profit account, the balances and the amount of the dividend account.

Q. The amount of the dividend account?

A. Yes, sir.

Q. That is a gross amount, is it not? That is not a net undivided profit account, is it, on that date?

A. That is a net undivided profit account that was carried forward on December 31st.

Q. At that particular time, on April 13, 1910, is that a net undivided profit account of \$34,974.78?

A. That is the addition of the two items, undivided profit account and the dividend account. [685]

Q. That is a net amount? There is that much undivided profits in the bank on that date?

A. According to those books; yes, sir.

Q. Are there any other profits?

A. You had a statement of the revenues and expenses.

Q. I want to know the net undivided profits, the net earnings, of the bank on that date, as shown by those books.

(Testimony of R. C. Wood.)

Mr. McGINN.—It has been testified to by Mr. Stewart.

Mr. RIDER.—Q. Are there any expenses that should be charged against that amount?

A. Yes, sir.

Q. In what sum?

A. Not against this amount exactly. There are expenses and revenues.

Q. What is the item of expenses on that date?

A. The item of expense account is \$13,791.33.

Q. Can you compute from that statement you have there, the net earnings on that date?

A. The net earnings of the bank from January 1 to April 13th?

Q. No. As shown there on April 13th, what were the net earnings?

A. I don't remember whether the warehouse account is an earning account or not.

Q. Well, I don't know. A. \$12,892.04.

Q. What were the expenses on that date?

A. The expenses were \$13,791.33.

Q. What was the bad debt account on that date?

A. \$43.62.

Q. Add the bad debt and expense accounts.

A. \$13,851.71.

Q. What is the difference between that and the net earnings? [686] A. \$959.67.

Mr. RIDER.—That is all.

#### Redirect Examination.

By Mr. McGINN.—Q. Mr. Wood, I will ask you to state whether or not Mr. Hill had more than one

(Testimony of R. C. Wood.)

of your powers of attorney.

A. To the best of my recollection he had two.

Q. Do you know when the first power of attorney was executed?

A. I think it was when he first came into the partnership business in 1905.

Q. State whether or not that was a special or general power of attorney.

A. I think it was a general power of attorney.

Mr. McGINN.—That is all.

**[Testimony of James W. Hill, for Defendants.]**

JAMES W. HILL, a witness for defendants, after being duly sworn, testified as follows, to wit:

**Direct Examination.**

(By Mr. McGINN.)

Q. What is your name?      A. James W. Hill.

Q. Where do you reside?

A. Seattle, Washinton.

Q. What position do you occupy at present?

A. Assistant Superintendent Wells, Fargo & Company.

Q. When did you first come to Fairbanks, Alaska?

A. The spring of 1903, I think.

Q. And what was your business at that time?

A. At that time I was assistant traveling auditor of the Northern Commercial Company.

Q. How long did you continue with the Northern Commercial Company?    **[687]**

A. Until April, 1905.

Q. Then what did you do?

(Testimony of James W. Hill.)

A. Joined the copartnership of Fairbanks Banking Company.

Q. And that consisted of yourself, Mr. Wood and Captain Barnette.      A. Yes, sir.

Q. State whether or not you held a power of attorney of R. C. Wood's in the year 1905.

A. I don't remember absolutely. I think we exchanged powers of attorney at the time I joined the bank, but I have no distinct recollection.

Q. This partnership continued to do business, carrying on a banking business here, until about the 16th day of March, 1908, did it not?      A. Yes, sir.

Q. Were you present at the time the negotiations were carried on between the proposed incorporators of the Fairbanks Banking Company, a corporation, and the Fairbanks Banking Company, a partnership?      A. Yes, sir, at some of the negotiations.

Q. You remember the date that the Fairbanks Banking Company suspended business—the partnership?      A. On or about December 12, 1907.

Q. What was then done?

A. The bank called a meeting of its depositors.

Q. Where did they meet?

A. They met in the courthouse; this room here.

Q. Do you remember what date that was?

A. I think November 13, 1907.

Q. What did that meeting do?

A. They first of all appointed or elected by ballot a committee [688] of five to investigate the affairs of the bank, and determine whether it would be necessary to appoint a receiver for the bank.

(Testimony of James W. Hill.)

Q. That committee consisted of whom?

A. Doctor Cassels was chairman, and the other members were Claypool, Jonas, Ryan and Preston.

Q. What did that committee then do, Mr. Hill?

A. They came to the bank and spent about two days and practically all of one night.

Q. Doing what?

A. Going over the notes of the bank and investigating the books, in which they had the assistance of two accountants.

Q. Who were these accountants?

A. Mr. R. H. Miller of the firm of R. H. Miller & Co. of Chena, and Mr. Charles E. Taylor.

Q. Was Mr. Miller a competent accountant?

A. He was auditor of the North American Transportation & Trading Company for many years.

Q. Mr. Taylor was also a competent accountant?

A. Yes, sir.

Q. State whether or not this committee went through the affairs of the bank carefully.

A. They did, in my opinion.

Q. Do you remember at a meeting of this committee that the question came up as to the paper or loan as it was called, of the Tanana Electric Company?

A. Yes, sir. It was discussed.

Q. Was that discussed by them?      A. Yes, sir.

Q. Tell what was done, and what was shown them in connection [689] with that.

A. The note was shown to them, together with a letter or document which I think was signed by Mr. Chilberg as vice-president of the Scandinavian-American Bank.



(Testimony of James W. Hill.)

Q. What was that?

A. To the best of my recollection it set forth how the money should be advanced to make up the total amount that Mr. Chilberg had agreed that the Scandinavian-American Bank would advance on the mortgage which they took for \$100,000.

Q. To whom was this addressed?

A. I don't remember. But it set forth the manner in which the money should be disbursed.

Q. In whose possession was that?

A. In the possession of the bank at that time.

Q. When did you last see that?

A. I don't remember now.

Q. When was it figured that the Fairbanks Banking Company as a corporation would be able to take over the affairs of the partnership?

A. I remember that it was February 15th.

Q. What discussion was had relative to what should be done with the interest on the existing loans of the Fairbanks Banking Company, a partnership, as of date the 12th day of December, 1907, up until the bank should open up?

Mr. RIDER.—We object as irrelevant, incompetent and immaterial.

The COURT.—He may state the facts.

A. It was agreed that the copartnership should be entitled to the accrued interest on those loans up until the new bank would start business, or, in other words, until the new bank would be in a position to take over the securities.

Q. At what time was it figured that the new bank

(Testimony of James W. Hill.)

would be able to take it over?

A. About February 15th. [690]

Q. And do you remember the date that the Fairbanks Banking Company was organized?

A. March 15th or 16th.

Q. March 12th, was it not?

A. It might have been. I am depending on memory entirely now. [691]

Q. Mr. Hill, were you present at a meeting of the proposed stockholders held at the office of McGinn & Sullivan on or about the 6th day of January, 1908, when a subscription list that had been prepared, or a subscription paper that had been prepared, was signed by those persons present? A. Yes, sir.

Q. I will ask you to examine Plaintiff's Exhibit "B" and state whether or not that was the subscription that was signed at that time, if you can tell. (Hands same to witness.) A. Yes, sir.

Q. You signed that, did you? A. Yes, sir.

Q. I will ask you to look at the name "R. C. Wood," and state whether or not you signed his name to that instrument. A. I did not.

Q. You held Mr. Wood's power of attorney at that time, did you not, that is introduced in evidence here? A. Yes, sir.

Q. Why did you not sign his name to this subscription list, Mr. Hill?

A. I didn't feel justified in committing Mr. Wood, who was then on the outside.

Q. Was there any discussion had in regard to the matter at that time? A. Yes.

(Testimony of James W. Hill.)

Q. Can you tell us in substance what it was?

A. I stated to the meeting, as near as I can remember at present, that I didn't know how Mr. Wood would feel about the matter of the reorganization, and I didn't feel like [692] subscribing for him.

Q. You were present at the meeting of the stockholders held upon the 12th day of March, 1908?

A. I think so.

Q. And you were present at the time the board of directors were elected at that meeting, were you not?

A. Yes, sir.

Q. The stockholders at that meeting elected David Yarnell. Did you know David Yarnell?

A. I did.

Q. What was his business?      A. Mining.

Q. Where was he mining at that time?

A. On Dome Creek, I think.

Q. What kind of a man was Dave Yarnell?

Mr. RIDER.—Plaintiff objects as irrelevant, incompetent and immaterial.

Mr. McGINN.—I have a right to show the character of the directors; that he was a miner, and not a banker; and I have something else in view.

The COURT.—He may answer, subject to the objection.

A. He was a man of substantial means, a large operator, and a man of good integrity who stood well in the community.

Mr. McGINN.—How was his judgment regarded?

A. On what?

(Testimony of James W. Hill.)

Q. On mining properties.

A. It was considered good.

Q. Dan Ryan. What was Dan Ryan's business?

A. Dan Ryan owned a cigar store in town on First Avenue. He was also worth considerable means. [693]

Q. Both of these men had considerable deposits, or did both of these men have large deposits at that time in the bank?

A. I believe so. The books will show for that.

Q. C. J. Robinson?

A. He was mining at the time.

Q. Do you remember where he was mining at that time?

A. Either on Vault or Dome Creek. He mined on both creeks.

Q. What kind of a man was Robinson?

A. Considered conservative, of good character.

Q. M. H. McMullen. Do you know where he was operating at that time?

A. I think he was on Goldstream, Mr. McGinn.

Q. What was his business? A. Mining.

Q. Mr. C. E. Claypool.

A. He was an attorney at law.

Q. Robert Sheppard, A. Miner.

Q. Where was he engaged in mining?

A. On Fairbanks Creek.

Q. How were these men, Claypool, McMullen and Sheppard, regarded here in the community?

Mr. RIDER.—Q. Sheppard was never a director, was he?

(Testimony of James W. Hill.)

A. I don't think he ever qualified. My recollection is that Sheppard was elected, but never qualified.

Q. Cassels never qualified either?

Mr. McGINN.—His name doesn't appear here.

Q. Well, Claypool and McMullen; how were they regarded in the community? A. Good.

Q. Hans Stark. A. He was a mining man. [694]

Q. Where had he mined?

A. At that time I don't think he was mining, but he had made considerable money on Tenderfoot Creek.

Q. Had he prior to that time mined on Cleary?

A. Yes.

Q. John Flygar.

A. John Flygar was a mining man. He was then mining on lower Cleary.

Q. J. A. Jesson.

A. J. A. Jesson was mining at that time on Ester Creek, to the best of my recollection.

Q. J. P. Anderson.

A. J. P. Anderson I think mined on Cleary Creek.

Q. D. H. Jonas.

A. D. H. Jonas at that time owned a half interest in the Eagle Saloon, and also had numerous mining interests.

Q. E. T. Barnette.

A. E. T. Barnette was one of the copartnership that sold to the corporation, and had, of course, large mining interests.

(Testimony of James W. Hill.)

Q. Can you tell me what the stockholders had in view—one of the things they had in view when they elected this board?

Mr. RIDER.—We object to that as irrelevant, incompetent and immaterial.

The COURT.—The stockholders are not being held responsible.

Mr. McGINN.—I want to show that they selected men from the various creeks as directors so that in case of applications for loans these directors out there would know about the property, and they could be inquired of concerning the value of the property; that that was in view at that time.

The COURT.—That is getting too far away. Objection sustained.

Mr. McGINN.—Q. Now, from the minutes of the directors' meeting in [695] evidence here, it appears that the matter of taking over the affairs, that is, seeing that the proper conveyances of the property were made transferring it from the partnership to the corporation, was left to the executive committee. I will ask you to state what steps were taken and what was done by the executive committee towards carrying out that power that is conferred upon them.

A. I remember that they came into the bank I think on the day following, and went over the securities—the notes and securities.

Q. For what purpose?

A. I presume for the purpose of determining whether the notes were in the possession of the bank



(Testimony of James W. Hill.)

that they were selling to the corporation.

Q. Do you know what was then done towards making out the necessary transfers?

A. I think that matter was attended to by Mr. Dusenbury.

Q. Mr. Hill, you had the privilege of taking over stock or money for your portion of the assets that exceeded the liabilities of the partnership, in the corporation.

Mr. RIDER.—We object as irrelevant, incompetent and immaterial.

The COURT.—There is no question about that.

Mr. McGINN.—No question about that. But I want to show his absolute good faith in the institution at that time.

The COURT.—I think it appears that he took stock.

Mr. McGINN.—Q. Are you acquainted with Mr. Dusenbury? A. Yes, sir.

Q. How long had Mr. Dusenbury been connected with the partnership?

A. From the early summer of 1905. [696]

Q. And stayed with the Fairbanks Banking Company until some time in October, 1909, did he not?

A. Yes, sir.

Q. I will ask you what Mr. Dusenbury did for the purpose of taking stock in the corporation.

Mr. RIDER.—Objected to as irrelevant and immaterial.

The COURT.—It already appears that he subscribed for stock, does it not?

(Testimony of James W. Hill.)

Mr. McGINN.—Yes, but I want to show that he sent outside and got the money from a savings account, to show what faith he had in the bank at that time.

The COURT.—Objection sustained.

Mr. McGINN.—We offer to prove that if permitted to answer, he would make that answer.

The COURT.—Yes.

Mr. McGINN.—Q. You became a member of the board of directors when?

A. I think September, 1908. [697]

Q. Now, I wish you would go on and state in your own way what you know in reference to this Tanana Electric Company loan.

A. In the summer of 1906 Mr. J. E. Chilberg, vice-president of the Scandinavian-American Bank, came to Fairbanks. One of the objects of his visit was to finance, or help finance, the Tanana Electric Company, which was then operating on Cleary Creek, at the mouth of Cleary Creek. They were then operating with a small plant, and of course their power was limited. Mr. Chilberg had some plans for the installation of water power by turbines, and he wanted to get some local people interested in the project along with the people who had subscribed for stock in Seattle, and he circulated a subscription list among some of the people whom he was acquainted with here, with the result that some \$40,000 was subscribed—\$70,000 worth of stock was subscribed, to be paid for at a certain given date. One of the conditions of the subscription was that the

(Testimony of James W. Hill.)

Scandinavian-American Bank would advance the sum of \$100,000 for the installation of this power plant—water power plant. The Tanana Electric Company were to give a first Mortgage to the Scandinavian-American Bank for \$100,000, which was subsequently done and the mortgage sent out to Seattle. At the time that these subscriptions fell due, the local subscribers paid in something like \$40,000 in cash, which was remitted to the Scandinavian-American Bank or to Mr. Chilberg at Seattle. [698]

Q. Who was that paid to?

A. I think it was paid into the bank.

Q. And by the bank—

A. And by the bank remitted to Seattle. The balance of that subscription was the subscription of Mr. Volney Richmond, for which I understood he gave a note to Mr. Chilberg. Anyway, it was a personal transaction between them, as to how he should pay for his stock. The other \$5,000 I think was a subscription of Mr. Chilberg himself, in addition to what he had originally subscribed. After the mortgage had been prepared and sent out, the Scandinavian-American Bank or Mr. Chilberg transferred a credit to the Fairbanks Banking Company of \$18,500.

Q. Why did they transfer that? What was the arrangement between Chilberg and the bank in regard to the bank advancing any money?

A. I testified the other day that there was some document in existence at that time in the nature of an authority for the bank to advance that money and be reimbursed by the Scandinavian-American Bank

(Testimony of James W. Hill.)

until the full amount of the mortgage had been disbursed.

Q. What was the arrangement in regard to when the bank was to be paid for these advancements?

A. From time to time.

Q. State what the arrangement was.

A. I don't remember the exact wording of this document.

Q. I don't care about the document, but the understanding between you outside of the document.

A. The understanding, you mean, between Chilberg and the Fairbanks Banking Company?

Q. Yes. [699]

MR. RIDER.—That is objected to unless it is shown that Mr. Chilberg had authority to speak for the Scandinavian-American Bank at that time.

A. This document I have in my mind at the present time was signed by Mr. Chilberg as vice-president of the Scandinavian-American Bank. (Objection overruled.) The officers of the bank never felt for one moment that they were advancing the money to the Tanana Electric Company on the credit of the Tanana Electric Company, but were making advances to the Tanana Electric Company for which they would be reimbursed by the Scandinavian-American Bank from time to time.

Q. What was the understanding as to how these advances should be made, and how you were to be credited?

A. We were to telegraph the Scandinavian-American Bank from time to time as money was required,

(Testimony of James W. Hill.)

and they would in turn credit bank account.

Q. When money was required by whom?

A. When money would be required by the Tanana Electric Company to pay their pay checks.

Q. Did you advance them the money here, and then telegraph to them that you had done it?

A. Yes, sir.

Q. State what the arrangements were and what you did in that respect.

A. I don't know that we had advanced the full amount of \$18,500 that we telegraphed for the first time, but we had advanced a good portion of it. The books will show exactly what had been advanced. You know I am testifying from memory as to matters that happened seven years ago, and I have not referred to the books before going on the stand. [700] My recollection is that we had advanced the major portion of \$18,500.00 before we telegraphed to the bank for that amount of credit to our account, which they credited to our account, but instructed us to send a note for that amount. That amount was exhausted immediately, and we commenced to advance more money until we had advanced some \$25,000, at which time we again telegraphed, and received a credit. Then, subsequently, we kept on paying pay checks right along, and felt that we were absolutely secure. And in the fall, along towards the end of September, Mr. Richmond went outside with the understanding with the bank—I heard him talking with Mr. Wood—that as soon as he got to Seattle he would arrange with Mr. Chilberg to apply the whole

(Testimony of James W. Hill.)

balance of the \$100,000 to our credit and have it telegraphed into Fairbanks to reimburse the bank for what they were advancing in the meantime. He knew we were paying those checks right along—and that this balance of that money so transferred would reimburse the bank for what they had advanced up to that time and take care of any future demands in connection with the work.

Q. What position did Mr. Richmond occupy?

A. He was manager of the Tanana Electric Company.

Q. Did you receive any word from Mr. Richmond?

A. I didn't receive any word direct, but I saw a telegram from Mr. Richmond.

Q. To whom?

A. To Mr. Wilson, who was their secretary at that time. He brought it over to the bank and showed it to me.

Q. Do you know where that telegram is?

A. No. It was never in my possession. [701]

Q. Have you tried to locate it?

A. I asked Richmond for that, but he couldn't find it. I think Mr. Wilson kept it.

Q. What were the contents of that telegram?

A. It was to the effect that Chilberg was absent in the east and was expected to return in ten days or two weeks, at which time the matter would be arranged; and that Richmond was leaving that night for San Francisco.

Q. Arrangements in reference to this advance of money?



(Testimony of James W. Hill.)

A. Exactly. So we kept on advancing money until the amount reached approximately \$30,000, and I figured that by that time we should have heard from Mr. Chilberg; that the time had elapsed so that he should be back in Seattle, and I knew that there was a financial flurry threatening on the outside, and I telegraphed Chilberg that the advances to the Tanana Electric Company up to that time were so much, and asked that he credit the account of the bank, and telegraph us; furthermore, in my message I think I said that unless that credit were placed immediately we would have to discontinue making, or paying, any more checks of the Tanana Electric Company. He came back with a wire, which I believe is in evidence, that we should make no further advances to the Tanana Electric Company, which telegram was followed up with a letter explaining financial conditions on the outside.

Q. Then what did the bank do in the way of obtaining any paper?

A. At that time, we had never taken any notes from the Tanana Electric Company until telegraphed to do so by the Scandinavian-American Bank; we simply carried the account as an overdraft, and when that credit was transferred by [702] telegraph, we charged the Scandinavian-American Bank and credited the checking account of the Tanana Electric Company. But at that time when Chilberg wired back to make no further advances, or on or about that time, this Tanana Electric Company showed an overdraft of about \$30,000, and as I remember, I went

(Testimony of James W. Hill.)

upstairs and consulted you in regard to the matter, and you advised me that I take a note.

Q. Take the note of whom?

A. From the officers of the Tanana Electric Company here, Mr. Claypool and Mr. Wilson, which I did, because we were not in the habit of carrying any large overdrafts.

Q. Those are the notes that you subsequently carried in the bank.

A. Those are the notes that we subsequently carried in the bank, and we expected the Scandinavian-American Bank to pay it.

Q. I will ask you if in March, 1908, you regarded that as a good claim against the Scandinavian-American Bank?     A. I did.

Q. How would you regard that claim in April, 1910?

A. I would say that at that time it was still good.

Q. Do you know whether or not the Scandinavian-American Bank had advanced against this?

A. Yes. They took care of some of our drafts at that time which were being presented in Seattle to the amount I think of some \$10,000, which account was carried on the books I think up until the time I left; in *order* words, we owed the Scandinavian-American Bank on our books, as against that credit, some \$10,000.

Q. Did the Scandinavian-American Bank ever make any demand [703] for that \$10,000?

A. Not to my knowledge. I might say further that in connection with this Tanana Electric Com-

(Testimony of James W. Hill.)

pany, in the fall of—early spring of 1909, Mr. Claypool went outside to Seattle and took with him all the data that we could give him at that time, with the idea that he was going to force the Scandinavian-American Bank to come through with the balance of that mortgage.

Q. Do you know whether or not he had this order or guaranty?

A. I think Mr. Claypool had it at that time. I am reasonably sure I saw it in his office one time.

Q. Is that the last you have ever seen of it?

A. Yes.

Q. You testified Mr. Claypool was an attorney.

A. Yes, sir.

Q. Did you ever hear him express an opinion as to whether that guaranty was binding upon the Scandinavian-American Bank?

Mr. RIDER,—We object as immaterial.

Mr. McGINN.—This is a question of good faith.

Mr. RIDER.—What are you relying on; the guaranty or something that Claypool said?

Mr. McGINN.—I am asking whether Claypool expressed himself on it. The directors, if they make a mistake, are not responsible if they acted in good faith; and the fact that they acted under instructions of attorneys, relieves them.

The COURT.—He may answer the question.

A. Not only Mr. Claypool, but the trustees. There were several other trustees of the Tanana Electric Company in town here. and they thought at all times that we were absolutely [704] secure,

(Testimony of James W. Hill.)

and protected on those advances.

Mr. McGINN.—Q. You were a stockholder at the time the bank closed,     A. I was.

Q. How did you happen to leave the bank?

A. Principally on account of my health. I had to go outside in the fall of 1909 to undergo an operation.

Q. When did you leave here?

A. On September 19th I think it was, 1909.

Q. I will ask you to state what in your opinion was the condition of the Fairbanks Banking Company at that time?

A. I considered it in good condition. 1909 had been the biggest year in the history of Fairbanks so far as the output of gold was concerned, and general conditions were good.

Q. About the Dan Jonas drafts. Explain about that.

A. Those are the drafts for \$2,000 and \$3,000 respectively?

Q. Yes.

A. My recollection of these transactions is; that in the summer of 1909 Jonas was mining,—operating as a miner, and was also interested in some copper properties with Doctor Pohl over in the Copper River country, and he required money from time to time in connection with payments on these properties and other properties, and we on several occasions cashed drafts of Mr. Jonas drawn on his brother in New York. He showed us letters and correspondence from his brothers, or his brother Ralph, indi-

(Testimony of James W. Hill.)

cating that he, [705] or his two brothers, would finance Jonas and these properties to a certain amount, some sixteen or twenty thousand dollars is my recollection at the present time. We, as I say, advanced from time to time on drafts of from \$1000 to \$1500, and took his draft or drafts and sent them to New York where they were paid. Along in the early fall, just before I went outside in 1909, Jonas came to the bank and stated he would like to draw \$5,000 on his brother at New York in two drafts dated on two different dates, I think one month apart,—for the sake of argument I think one was dated on the 1st of November and the other on the 1st of December. He said that he was still well within the amount that his brother had agreed to finance him for. Of course, the officers of the bank had no authority to do anything of that kind without the consent of the board of directors, or of the executive committee at any rate, and the matter was brought up before the executive committee, or the board of directors—the minutes should show—and the circumstances explained, and, in view of the fact that we had previously during the summer advanced certain moneys against this credit that he was supposed to have, we were authorized as officers to do so again.

Q. And the advances were made?

A. And the advances were made, and the drafts taken.

Q. Did you ever see a telegram that was sent—  
(Interrupted.)

(Testimony of James W. Hill.)

A. I left the bank. I have simply been told that the drafts have never been paid. [706]

Q. Do you remember whether or not, prior to the adoption of the by-laws, the question of the corporation buying the stock of any of its members was discussed? A. At which meeting?

Q. Prior to the stockholders meeting of March 12, 1908 when the by-laws were adopted.

A. Yes. The matter had been discussed.

Q. What was the sense of the stockholders upon that matter? [707]

A. That it would be advisable to have the bank have the first option to buy back its own stock.

Q. For what reason?

A. So that they could control the stock, or so that it couldn't fall into other hands and be used for purposes detrimental to the bank's interests; in other words, we didn't want any of the other banks to get hold of any of that stock.

Q. Do you know whether any advice was taken at that time as to whether the corporation had the power to buy in stock?

A. The whole transaction was handled under the advice of the firm of McGinn & Sullivan, who were then attorneys for the bank.

Mr. McGINN.—I desire to read into the record at this time these portions of the by-laws (Reads):

“All issued and outstanding stock of the company that may be donated to or purchased by the company or which shall revert to the company by reason of failure to pay for the same, shall be Treasury stock,



(Testimony of James W. Hill.)

and shall be held subject to disposal by the action of the board of directors. Said stock shall neither vote nor participate in dividends while held by the company.

The board of directors shall be given the first option to purchase for the corporation the stock of any stockholder, and shall be entitled to purchase the same, provided said board of directors shall offer to pay to said stockholder the same amount, as he might obtain from other persons."

Q. Do you know whether or not the directors of the Fairbanks Banking Company received any compensation for serving? A. No, sir.

Q. What was the intention of the board of directors in regard to the stock that was surrendered and turned into the treasury as to retiring it for good, or reissuing it?

A. The intention was at all times to reissue it to other purchasers. [708]

Cross-examination.

Mr. RIDER.—Q. Do you know anything about a telegram being sent to Mr. Wood respecting this discussion that was had with the board of directors and Captain Barnette on March 12, 1909, in regard to obtaining estimates of the value of Gold Bar?

A. I think we wired—(Interrupted.)

Q. In 1908, I mean.

A. Yes. I think a wire was sent to him.

Q. Examine this telegram of March 18th, and which has been offered in evidence and marked Plaintiff's Exhibit "S," and tell me if that is the tele-

(Testimony of James W. Hill.)

gram. The translation is on the back of it.

A. Yes, sir. I think such a telegram was sent.

Q. This is the telegram that was sent as a result of the discussion between the directors and Captain Barnette respecting whether or not the directors would take the Gold Bar stock?

A. I think we also telegraphed Dexter Horton & Company.

Q. And you telegraphed your partner Mr. Wood at the same time.

A. Yes, sir. He was in Seattle at that time.

Q. And in this telegram you state (Reads):

“Directors of the bank desire the opinion of Dexter Horton estimate value Gold Bar. Desire to know from independent source to make denial of rumors here that accepted valuation is too high.”

That is what you asked Dexter Horton’s opinion for. A. The directors asked the opinion.

Q. To make denial of rumors that you were buying it for too much?

A. To satisfy them absolutely that the property was worth the value.

Q. There were some rumors here that you were paying too [709] much for Gold Bar, were there not?

A. It was so expressed at the meeting of the board of directors I didn’t hear them outside of there.

Q. At that same meeting you voted to take it—March 12th. A. I didn’t vote.

Q. The board of directors did, and you were present? A. I was present, but I was not a director.

(Testimony of James W. Hill.)

Q. You were a member of the executive committee at that time?

A. I think I was elected that night to the executive committee.

Q. You were vice-president then?

A. Elected that night I think, Mr. Rider.

Q. Elected after this meeting was held?

A. I think at that same meeting.

Q. You were there and knew that this discussion was on?     A. Oh, yes.

Q. And you know that the directors had decided to take Gold Bar.     A. Yes, sir.

Q. And then, after they had decided to take it, they wired Mr. Wood, stating that they wanted the estimate of Dexter Horton because there were rumors here that they had paid too much for it.

A. Yes, sir.

Q. It was to quiet that rumor that you wanted to hear from Dexter Horton.

A. Not to quiet any rumor I knew of. It was merely expressed at that meeting that there was some rumor.

Q. The purpose of sending that telegram was to allay that rumor?     A. The telegram to Mr. Wood?

Q. Yes. [710]

A. No. The telegram to Dexter Horton was the wire.

Q. The telegram was to Wood to inform him that the directors wanted the opinion of Dexter Horton so that they could allay that rumor?

A. Unquestionably the telegram would so indicate.

(Testimony of James W. Hill.)

Q. During the time of the organization of the bank, the corporation, I believe you stated that Mr. Wood was outside.     A. Yes, sir.

Q. And you and Mr. Barnette were here looking after the partnership matters.

A. Most of the time, I was in Valdez part of the time.

Q. And you went there to meet Mr. Wood?

A. Yes.

Q. Why didn't you go on down to Seattle?

(Defendants object as immaterial. Sustained.)

Q. How long were you at Valdez?

A. About three weeks.

Q. Then you immediately returned to Fairbanks.

A. I did.

Q. And excepting that interim, you were here all the time during the negotiations in the matter of the reorganization of the bank?     A. Yes, sir.

Q. You kept Mr. Wood constantly advised by telegram and letter of what was going on.

A. I presume so.

Q. Don't you remember you did?

A. I think so.

Q. You endeavored to do so?

A. I was here at the time the first meeting was held on or about January 5th or 6th, and my recollection is that I started for Valdez very shortly after that, and was absent [711] from here until almost the end of February.

Q. Prior to the time you went to Valdez, and while Mr. Wood was in Seattle, you endeavored to keep

(Testimony of James W. Hill.)

him advised of the situation.

A. I think I sent him telegrams.

Q. Frequently?

A. I don't know how frequently.

Q. You also wrote him lengthy letters about what was transpiring here?     A. Yes, sir.

Q. Do you remember the receipt from Mr. Wood of a telegram dated Seattle, January 6th, and which has been identified and offered in evidence as Plaintiff's Exhibit "X," addressed to the Fairbanks Banking Company, the translation is on a little yellow sheet on the other side?

A. Yes, sir. In fact, I wrote that translation myself.

Q. This telegram is in reply to one from you of the 27th of December, and states; "If you can organize, can we obtain an interest in." That is a request, as you understood it, from Mr. Wood to obtain an interest in the bank that was being organized.

A. Yes, sir.

Q. Do you remember the date that telegram was received, whether it was received the day of its date, January 6th?     A. I don't remember that.

Q. It bears date of January 6th.

A. It probably was received that day, or the following day, unless the lines happened to be down.

Q. You wrote Mr. Wood a letter dated January 8th, and which is in evidence as Plaintiff's Exhibit "F-16." (Hands same to witness.) State whether or not you can identify that [712] as the letter, or whether you remember the letter.

(Testimony of James W. Hill.)

A. I think I identified that letter the other day, at least I identified my signature.

Q. You remember the letter?

A. I remember that letter. Yes, sir.

Q. That letter bears date January 8, 1908.

A. Yes, sir.

Q. That was after the meeting of the proposed stockholders and subscribers, to which your attention was called by Mr. McGinn, and at which meeting the list of subscribers, on which Wood's name appears, was presented? A. Yes, sir.

Q. And you wrote this letter for the purpose of advising Mr. Wood, and did advise Mr. Wood, that there would be a quantity of the stock reserved for yourself, Mr. Wood and Mr. Barnette?

A. Yes, sir. It went further. Mr. Wood and I had the option of taking cash in lieu of stock.

Q. You think that is in this letter?

A. May I look at it a moment?

Q. Certainly (Hands same to witness.)

A. No, I don't see it there. But I think I wired him at that time to that effect, though.

Q. Now, the stock subscription to which your attention was called by Mr. McGinn, and which has Mr. Wood's name to it, you say you did not sign Mr. Wood's name to that. Do you know who did?

A. Yes, sir.

Q. Who? A. Captain Barnette.

Q. And this telegram of Mr. Wood, to which your attention was [713] called, and which is dated January 6th, is addressed to the Fairbanks Banking



(Testimony of James W. Hill.)

Company, of which Captain Barnette was a member as well as yourself?     A. Yes, sir.

Q. Do you remember whether that name of Mr. Wood was signed there prior to the time that the proposed stockholders convened, or during the time they were in session?     A. It was at the meeting.

Q. Mr. Barnette signed Mr. Wood's name.

A. I remember that very distinctly.

Q. Then you presented the list to those who were present?

A. I didn't personally. At that meeting, you mean, on January 5th?

Q. Yes.     A. No.

Q. Who did present that list?

A. I don't remember now. That is the meeting on January 5th, the original meeting?

Q. Yes. Did you present it, or did someone else?

A. I think not. I signed it, though, then.

Q. You are right. The minutes show nothing at that meeting of that sort. But at the meeting of the stockholders, when you actually became stockholders, which was held on the 12th of March, 1908, the date the by-laws were adopted, you were present at that meeting?     A. Yes, sir.

Q. And at that meeting you did present the subscription showing the subscribers to the capital stock, did you not?

A. Mr. McGinn asked me that, but I don't really remember presenting the list.

Q. You don't remember whether you presented it or not?     [714]

(Testimony of James W. Hill.)

A. No. But if the minutes say I did, I don't deny it. But I have no present recollection of it one way or the other.

Q. Do you remember whether that was the same subscription list as the one that was presented to the proposed stockholders on January 6th?

A. I don't remember that.

Q. Now, Mr. Hill, you state that the bank opened on December 23, 1907.

A. To the best of my recollection that was the date.

Q. And at that time you went on a scrip basis.

A. Yes, sir.

Q. The partnership continued on a scrip basis to the time that the corporation was formed, did it not?

A. I couldn't be sure, but I think so. I wouldn't be absolutely sure.

Q. And at the time that the corporation was formed, the securities of the partnership were in the hands of trustees, were they not? A. That is so.

Q. You remember that?

A. Yes, for the redemption of the scrip.

Q. And under *and* agreement between the partners and the depositors committee. A. Yes, sir.

Q. And when the corporation came into existence and started in to do business on March 16, 1908, all of its available securities were in the hands of the trustees to protect scrip that had been issued by the depositors' committee during the time that you were a partnership, were they not?

A. I think so. [715]

(Testimony of James W. Hill.)

Q. Do you remember how long those securities remained in the hands of trustees?

A. After the incorporation?

Q. Yes.

A. I couldn't tell you. I presume until all the script was retired.

Q. There was some of it that was not retired for nearly a year and a half. But do you remember when the bulk of the scrip was retired?

A. I think along in April.

Q. Do you think it was as early as April?

A. I think it was.

Q. Anyway, down until that time these securities did remain in the hands of the depositors committee?

A. Yes, sir.

Q. And were not in the possession of the bank?

A. No, sir.

Q. That is, of the corporation?

A. I think that is right.

Q. What securities do you understand were turned over to the depositors committee, or these trustees?

(Defendants object as immaterial. Argument.)

Q. Going, now, to the Tanana Electric Company's note concerning which you have testified, the Fairbanks Banking Company, a partnership, was a stockholder in the Tanana Electric Company from the time of its organization down to the time that the depositors committee was appointed, was it not?

A. Not from the time of its organization.

Q. Well, they were at the time the depositors committee was appointed? A. Yes, sir. [716]

(Testimony of James W. Hill.)

Q. The Fairbanks Banking Company was an original subscriber to the stock, was it not?

A. Not original subscribers. They subscribed to some stock when Mr. Chilberg was in Fairbanks in the summer of 1906.

Q. And the partnership continued to own that stock down to the time that the corporation was organized? A. Yes, sir.

Q. That is the partnership of Barnette, Hill and Wood, known as the Fairbanks Banking Company?

A. Yes, sir.

Q. You were an officer of the Tanana Electric Company yourself, were you not?

A. I think at one time I was a trustee.

Q. A member of the board of directors?

A. A member of the board of directors.

Q. Do you know for what period of time you remained a member of the board of directors of the Tanana Electric Company? A. I don't remember.

Q. Were you a member of the board of directors in the fall and winter of 1907 and '8?

A. No. I think not.

Q. Do you remember whether you were a member of the board of directors at the time the depositors' committee was in existence in December, 1907?

A. I couldn't be sure.

Q. Was Mr. Claypool a member of the board of directors of the Tanana Electric Company?

A. I think he was the president of the company, and naturally would be a director.

Q. Was he not vice-president?

(Testimony of James W. Hill.)

A. Vice-president, yes, sir. Mr. Chilberg was president. [717]

Q. Was Mr. Wood a member of the board of directors? A. I think not.

Q. Was Mr. Jonas? A. I think so.

Q. Was Mr. Ryan? A. I think not.

Q. Now, Mr. Jonas and Mr. Claypool were members of the board of directors of the Tanana Electric Company, and they were also members of the depositors' committee, and they subsequently became directors of the Fairbanks Banking Company, a corporation, did they not?

A. Yes, sir. I don't know that they were members of the board of trustees of the Tanana Electric Company as late as the fall of 1907.

Q. Now, you remember, do you not, that the note of \$25,000 that was given by the Tanana Electric Company out of which this disputed account arose, was signed by Claypool, as vice-president?

A. I do. That is right.

Q. You referred in your testimony to some of the things that induced you to believe that the Scandinavian-American Bank was guaranteeing the advancements to the Tanana Electric Company.

A. Yes, sir.

Q. And, among those things, you referred to a clause in the subscription. I wish you would examine this paper, and tell me whether this is the subscription that you refer to. (Hands paper to witness.)

(Testimony of James W. Hill.)

A. The subscription, or the paper of authority—of guaranty?

Q. You referred to a subscription which you said contained a condition upon which the subscription was had?

A. That is the original subscription list. [718]

Q. That is the one that contains the condition that you refer to?

A. No. There was another paper besides that.

Q. Another subscription?

A. No. But another document.

Q. You referred to a subscription which contained a condition about the advancement of \$100,000 by the Scandinavian-American Bank for water power?

A. And I also referred to a document that was signed by Mr. Chilberg as vice-president of the Scandinavian-American Bank.

Q. This is the subscription list that you referred to? A. Yes, sir.

Q. Is there anything in there that says that the Scandinavian-American Bank will advance \$100,000?

A. Not in that.

Q. You are mistaken, then, when you said there was a condition in the subscription that the Scandinavian-American Bank would advance \$100,000? A. It is not on that subscription paper.

Q. The agreement that you referred to in your testimony, what was that agreement; tell me something about that?

A. I don't remember the wording of it, now.

Q. Can you remember what kind of paper it was



(Testimony of James W. Hill.)

on? A. I think it was a single sheet of paper.

Q. Typewritten? A. I think so.

Q. Who were the parties to that agreement?

A. I think the Scandinavian-American Bank by its vice-president, setting forth the manner in which the money should be advanced by the Scandinavian-American Bank? [719]

Q. Any other parties sign it? A. I think not.

Q. Do you remember there was a mortgage given by the Tanana Electric Company to the Scandinavian-American Bank in the sum of \$100,000?

A. Yes, sir. I do.

Q. And afterwards a certain memorandum of agreement was entered into between the Scandinavian-American Bank and the Tanana Electric Company which became a part of that mortgage? Is that the agreement that you refer to? A. No. No.

Q. The original paper that you refer to, you say was in the hands of Mr. Claypool the last time you saw it?

A. I think he had it the last time I saw it.

Q. Attached to the petition of intervention on the part of the Scandinavian-American Bank in the case of the Fairbanks Banking Company vs. The Tanana Electric Company, beginning at the bottom of page 5 is set out a certain agreement. I wish you would examine that agreement and tell me if that is the agreement that you refer to. (Hands paper to witness.)

A. No. I don't think that is the agreement.

Q. You don't think that is the agreement?

(Testimony of James W. Hill.)

A. No, I don't think so, Mr. Rider. (Returns same to Mr. Rider.)

Q. As I understand you, the Fairbanks Banking Company began making certain advances to the Tanana Electric Company in the year 1906—

A. 1907.

Q. —1907, and when those advances reached the sum of \$18,500, you took from the Tanana Electric Company a note in that amount payable to the Scandinavian-American Bank? Is that right?  
[720]

A. That is partly right.

Q. Wherein am I incorrect?

A. We took the note from the Tanana Electric Company after we had telegraphed to Mr. Chilberg or to the Scandinavian-American Bank.

Q. You first made the advancement of \$18,500 scattered over a period of time—

A. Or the major portion.

Q. —and then advised the Scandinavian-American Bank to that effect? A. Yes, sir.

Q. Then they replied by wire? A. Yes, sir.

Q. And directed you to take the note of the Tanana Electric Company in that amount? A. Yes, sir.

Q. And you did so? A. Yes, sir.

Q. And took the note payable to the Scandinavian-American Bank? A. Yes, sir.

Q. Subsequent to that transaction, the Scandinavian-American Bank gave the Fairbanks Company credit for \$18,500, and they took the note.

A. That is correct.

(Testimony of James W. Hill.)

Q. Then, the matter run along until you had made another bunch of advances? A. Yes, sir.

Q. Aggregating \$25,000, done in the same way?

A. Exactly.

Q. After that total had been advanced, you again wired the Scandinavian-American Bank, advising them that these advances had been made?

A. Yes, sir.

Q. And they again instructed you to take a note? [721]

A. That was the second time, yes, sir.

Q. They again instructed you to take *an* note from the Tanana Electric Company, payable to the Scandinavian-American Bank in the sum of \$25,000?

A. Yes, sir.

Q. And you didn't take that note until you got instructions from the Scandinavian-American Bank?

A. That is my recollection, yes, sir.

Q. There was no charge made on the books of the Fairbanks Banking Company against the Scandinavian-American Bank until you received these advices from them? A. That is my recollection.

Q. Then, when you took this second note, you forwarded it to the Scandinavian-American Bank and they advised you that credit would be given for it, or was given for it? A. That is my recollection.

Q. Then the matter was put on the books of the Fairbanks Banking Company after you received that advice? A. Yes, sir.

Q. After taking that note, you continued making advances to the Tanana Electric Company—

(Testimony of James W. Hill.)

A. Yes, sir.

Q. —until you had advanced the amount that is in controversy some \$30,000? A. That is correct.

Q. Now, during the time that those advances were made, or I mean, immediately following the time that those advances were made in that amount, you received notice from the Scandinavian-American Bank to make no further advances, didn't you, by telegram?

A. After we had wired that we had made certain advances, and must decline to make further advances unless they credited [722] our account with that amount of money.

Q. You wired to the same effect that you had with regard to the other two? A. I think so.

Q. That you had made these certain advances?

A. Yes.

Q. And they wired back to make no further advances? A. Yes.

Q. Do you remember the date of that wire?

A. I do not. The wire is in the bank, or in evidence. It speaks for itself. It was in November, wasn't it?

Q. Here is a telegram of the 10th of November, 1907, addressed to the Fairbanks Banking Company from Mr. Chilberg. It says (Reads): "Advance nothing more Tanana Electric Co." A. Yes, sir.

Q. That is the communication you received on November 10th? A. Yes, sir.

Q. That telegram was followed by a letter from Chilberg upon this same subject?

(Testimony of James W. Hill.)

A. Yes. We did receive a letter.

Q. Here is a letter from Mr. Chilberg dated November 9, 1907, addressed to the Fairbanks Banking Company, and which has been received in evidence as Plaintiff's Exhibit "I." Is that the letter that you received, explaining the matter, from Chilberg? (Hands same to witness).

A. Yes, sir. That is the letter.

Q. That letter is marked; "Received December 3/7 by the Fairbanks Banking Company."

A. Yes, sir.

Q. That is about the date that you received it here?

A. I judge so, if the stamp was right. [723]

Q. Then it was known to the members of the Fairbanks Banking Company, a partnership, that the Scandinavian-American Bank declined to protect the bank in the advances aggregating \$30,000, prior to the time that the depositors committee was appointed? A. Oh, yes.

Q. And long prior to the time that the directors of the Fairbanks Banking Company, a corporation, bought the assets of the partnership. A. Oh, yes.

Q. When the depositors committee—(Interrupted).

Mr. McGINN.—I think those documents speak for themselves. This is just the conclusion of the witness. It says "We will not advance any more money." I don't see how they could draw that inference.

Mr. RIDER.—The witness drew it.

WITNESS.—I didn't understand that question.

(Testimony of James W. Hill.)

Mr. McGINN.—I move that it be stricken out as a conclusion of the witness upon a written document, which is for the Court to determine, and not the witness.

The COURT.—Motion denied.

Mr. RIDER.—Q. Was it explained by you or by Captain Barnette to the depositors committee that you had such communication from the Scandinavian-American Bank?

A. Everything was shown to the committee.

Q. You showed that to the depositors committee?

A. Yes, sir.

Q. Showing that the Scandinavian-American Bank had repudiated the guaranty? [724]

A. I wouldn't say that they had repudiated the guaranty. They had simply said they would make no further advances on account of the financial conditions at that time.

Q. This is the correspondence that was shown to the depositors committee?

A. It must have been. The whole circumstances of that was gone into in detail.

Q. In connection with that, you say there was also shown to the depositors committee some instrument in writing, and you say the last you saw of it was in the possession of Mr. Claypool. A. Yes.

Q. It was also shown? A. Yes, sir.

Q. And it was known to the depositors committee that this account was in dispute, and the liability of the Scandinavian-American Bank was in dispute.



(Testimony of James W. Hill.)

Mr. McGINN.—That is calling for the opinion of the witness.

The COURT.—The witness may answer.

A. No. I wouldn't say that the liability of the Scandinavian-American Bank was ever in dispute, nor did the depositors committee think so.

Q. Do you mean that; "ever in dispute"?

A. At that time certainly not.

Q. It did become a matter of pretty serious dispute?

A. It might have. But at that time there was no question in my mind, nor in the minds of the depositors' committee, but that that was a legal obligation and one that would be taken care of by the Scandinavian-American Bank. [725]

Q. You had absolutely no doubt of that in your mind.

A. In fact, to go back a little. When Mr. Wood was in Seattle Mr. Chilberg promised to make that credit to our account, but subsequently declined, stating he couldn't do it then; that the directors had shut down absolutely on all loans.

Q. While Wood was there he did get that promise out of Chilberg?

A. Yes, sir, and he so wired us.

Q. And the next day he wired that Chilberg had declined to deal with you? A. Yes, sir.

Q. That was all before the incorporation of the bank? A. Yes.

Q. You wrote a letter on November 25, 1908, to E. S. McCord of Seattle, Washington, a big, long 13

(Testimony of James W. Hill.)

page letter, explaining this Tanana Electric transaction to him as the attorney from the bank?

A. As the attorney from the bank?

Q. As attorney for the bank.

A. No. He was never attorney for the bank.

Q. This was to Mr. McCord about bringing a suit out there for the Fairbanks Banking Company against the Scandinavian-American Bank.

A. It probably was.

Q. In this letter did you not use this language? Have you seen this letter recently?

A. I have not seen it recently.

Q. Would you like to examine it?

A. I would. Yes.

Q. At the time you wrote this letter the matter was fresh in your mind, in November, 1908. [726]

A. It probably was.

A. Much fresher than it is today.

A. It would be. Yes. (Witness takes letter.)

Q. You have read the letter I referred to?

A. Yes, sir.

Q. I will ask you if you did not state in that letter (Reads):

“Some days ago we received a wire from our president, Capt. E. T. Barnette, stating that the Scandinavian-American Bank had refused to settle for some advances made by us to the Tanana Electric Co. which were made by us on the strength of the Scandinavian-American Bank holding a mortgage from the Tanana Electric Co’’. A. The letter so states.

Q. That your advances were made upon the

(Testimony of James W. Hill.)

strength of the Scandinavian-American Bank holding a mortgage from the Tanana Electric Company Does not the letter continue further, thus? (Reads):

“Mr. Chilberg’s report, after having apparently gone over the situation thoroughly, was a very flattering one and looked like a very good investment particularly as one of the conditions of our subscribing stock here was that he would arrange with his bank in Seattle for a loan up to \$100,000 for the purpose of installing a water power plant”. A. Yes, sir.

Q. (Again reading from letter.)

“I might explain here that previously the Scandinavian-American Bank had entered into an agreement with the Tanana Electric Company in consideration of their receiving first mortgage that they would advance up to \$100,000 for the installation of a water plant in amounts as required. The amount of \$18,500 above [727] referred to was the first installment according to this agreement”.

A. I think I remember that.

Mr. RIDER.—This is a very long letter, 13 pages, and I am willing to read the entire letter if you want to hear it, or, if the Court desires, I can read from it the parts that are important.

The COURT.—Has that letter been introduced in evidence?

Mr. RIDER.—Not yet. But I will introduce the entire letter if the Court desires to hear it all.

Mr. McGINN.—You can pick out what parts you want, and not needlessly incumber the record.

Mr. RIDER.—(Reads):

(Testimony of James W. Hill.)

“In hearing no reply to our telegram of April 24, 1907, we accordingly wired on April 29th as per enclosed copy, and on April 30th received a reply stating that they would give us a credit of the amount required. The last mentioned telegram was confirmed in their letters of April 30th and May 1st, copies of which are also enclosed.”

“On September 2, 1907, we again telegraphed Mr. Chilberg in care of the Scandinavian-American Bank as per enclosed copy stating that the Tanana Electric Co. had deposited with us a second note of \$25,000, to be handled in the same manner as the first transfer of \$18,500. On September 7th we received his reply asking us to accept note and make advances accordingly. This was done.

Some few weeks later by which time the credit of \$25,000 was exhausted, Mr. Richmond, manager of the Tanana Electric Co., left here for Seattle and San [728] Francisco and before leaving had a conversation with our Mr. Wood, Cashier, in which he asked Mr. Wood to take care of the checks of the Tanana Electric Co. and that when he arrived at Seattle he would make arrangements with the Scandinavian-American Bank to have them transfer the balance of the \$100,000, namely \$56,500 as he figured that it would take that amount and probably more to complete the work.”

That is right, in your letter?      A. Yes, sir.

Q. (Further reading.)

“Of course we were not sure whether the Scandinavian-American Bank would advance the amount

(Testimony of James W. Hill.)

in excess of the balance of \$56,500, but very naturally took for granted that they would fulfill their agreement to the amount of \$56,500."

You were taking that for granted?

A. Yes, sir.

Q. The agreement referred to there is the agreement between the Tanana Electric Company and the Scandinavian-American Bank?

A. I presume so.

Q. (Continues reading):

"Mr. Richmond replied to the secretary's wire stating that Mr. Chilberg was absent in the east but was expected to return in about ten days, at which time he would then arrange matters. Meantime it was necessary for him to go to San Francisco on account of the sickness of a relative but he apparently proposed returning by the time Mr. Chilberg would get back. Meantime we were still taking care of the checks of the Tanana Electric [729] Co. with the assurance of the local board of trustees of the Tanana Electric Co.; that we were amply protected and that we would be reimbursed when the transfer of the balance of \$100,000 would be made by the Scandinavian-American Bank."

A. That is correct, and it was according to the letter.

Q. That is correct, isn't it?

A. I think so. I might break in here and say that at all times the board of trustees felt that we were protected by this same document that I maintain I saw at one time.

(Testimony of James W. Hill.)

Q. Is that document referred to in this letter?

A. I don't believe so.

Q. You have just read the letter?      A. Yes, sir.

Q. Is that document referred to in this 13 page letter?

A. I speak there of enclosing copies of all of the correspondence, and that document may have been in the nature of a letter.

Q. That document would not be correspondence between your bank and the Scandinavian-American Bank?

A. No, but it was probably a letter from J. E. Chilberg, as vice-president of the Scandinavian-American Bank to the Tanana Electric Company.

Q. You have recited the details of this transaction in the body of the letter?      A. Yes, sir.

Q. And nowhere in there have you referred to an agreement between the Scandinavian-American Bank and the Fairbanks Banking Company to protect these advances, have you?

A. That is correct.

Mr. RIDER.—(Continues reading):

“On November 6, 1907, we had a telegram from the Scandinavian-American [730] Bank informing us that our account with them was overdrawn and on November 7th we answered as per enclosed extract stating that we did not know that our account was overdrawn and presumed that Mr. Richmond had arranged a deposit for account of Tanana Electric Co. for \$69,000.

In connection with the refusal of the Scandinavian-



(Testimony of James W. Hill.)

American Bank to come through with the balance of \$100,000 as per their mortgage, we enclose extract of letter from Mr. Chilberg under date of Nov. 9th, reviewing the financial situation at that time and explaining why they had discontinued advances to the Tanana Electric Co. on their mortgage.”

That letter is the letter that was presented to your view a moment ago, from Mr. Chilberg, is it not?

A. Yes, sir.

Mr. RIDER.—(Continues reading):

“I have tried to explain the matter intelligently and hope that you will be able after reading same to grasp the situation. It may be that the Scandinavian-American Bank will fight the matter on the contention that they did not authorize this bank to make any advances for the Tanana Electric Company, but we think that we can satisfy any Court that Mr. Chilberg as an officer of the Scandinavian-American Bank was perfectly aware that we were taking care of the checks of that company feeling that we were fully protected by their mortgage.”

That is the report you made upon it, isn't it?

A. Yes, sir.

Mr. RIDER.—(Continues reading):

“We are at a loss to know why the Scandinavian-American [731] Bank did not make the two credits one of \$18,500 and the other of \$25,000—at the time, they informed us that they had done so but in as much as they allowed interest, we have no complaint to make on that score.”

A. Yes, sir.

Mr. RIDER.—(Reading):

(Testimony of James W. Hill.)

“In advancing these two amounts in our estimation they established a precedent which would be hard to get around at this time but you are a lawyer and will look at the matter from an impartial view point.” A. Yes, sir. [732]

Q. That was your report of the grounds on which the Fairbanks Banking Company made its claim against the Scandinavian-American Bank, and the report that you made to the man you were expecting to employ as attorney to present your claim for you, is it not? A. Yes, sir.

Q. This letter is dated November 25, 1909?

A. Yes, sir.

Q. That is long after the incorporation of the bank? A. Yes, sir.

Q. Now, when the note of the Tanana Electric Company, which evidences these advancements in dispute aggregating about \$30,000, was taken, that note was taken payable to the Fairbanks Banking Company, was it not? A. Yes, sir.

Q. And none of the other notes arising out of advances were taken payable to the Fairbanks Banking Company? A. That is so.

Q. But, on the other hand, were payable to the Scandinavian-American Bank? A. That is so.

Q. Was any stock which the bank took up during the time you [733] were a member of the board of directors or a member of the executive committee sold at public sale? A. No, sir.

Q. Was any advertisement of the fact that the stock was to be taken up made?

(Testimony of James W. Hill.)

A. Not by us, no.

Q. You spoke about a credit on the books of the bank in the matter of the Scandinavian-American Bank of some nine or ten thousand dollars.

A. Yes, sir.

Q. That had nothing to do with this \$30,000 item that was in dispute?

A. It was undoubtedly an advance to the payment of our drafts, pending some disposition of that credit.

Q. That credit didn't get on the books of the Fairbanks Banking Company? You never took credit on the books of the Fairbanks Banking Company for this \$30,000 advancement? A. No.

Q. You had a checking account against the Scandinavian-American Bank?

A. We drew against that credit, and they honored our drafts up to that amount.

Q. They honored your drafts until you became indebted to some \$10,000 without any reference to this deposit item.

A. How do you mean; without any reference?

Q. It was not included in the balance that is evidenced by this nine or ten thousand dollars, was it? You didn't charge it against the Scandinavian-American Bank? A. The nine or ten thousand dollars?

Q. The \$30,000 wasn't included in that account at all which finally showed a credit of nine thousand dollars? [734]

Q. We simply continued to draw against them, without making the actual credit.

(Testimony of James W. Hill.)

Q. And you were drawing against their arrangement with the Scandinavian-American Bank to make advances for you?     A. Oh, yes.

Q. That is, to honor your drafts when sent outside, and honor your transfers.

A. We had no arrangement at that time for any credit with the Scandinavian-American Bank.

Q. You had none?

A. I mean for a bank credit.

Q. At the time—

A. They were drawing those drafts.

Q. At the time these items were drawn which aggregated \$9,000?     A. I think not.

Q. They were extending you credit?

A. Yes. They were extending us credit.

Q. That credit wasn't connected in any way with the advances on behalf of the Tanana Electric Company?     A. No.

Q. You stated it was understood at the time these stock surrenders were made that it was expected that that stock would be reissued.     A. Yes, sir.

Q. As a matter of fact, there was never a reissue of any stock of the Fairbanks Banking Company, excepting \$1,000 worth, was there, after Mr. Wood surrendered his stock?     A. I don't know as to that.

Q. You have examined —(Interrupted).

A. I didn't keep the stock ledger. [735]

Q. And you haven't examined the statement of the treasury stock that has been introduced in evidence?     A. No.

Q. In the minutes of the directors' meeting of

(Testimony of James W. Hill.)

March 12, 1908, in which are embodied as a part thereof certain minutes of the stockholders and proposed stockholders, there appears a reference to the matter of taking over the assets of the Fairbanks Banking Company. You are familiar with that, are you? A. I have read those minutes.

Q. In which it is stated that those assets exceed the liabilities, as shown by the depositors committee, in the sum of \$288,000? A. Yes, sir.

Q. When the corporation did finally take over the assets of the partnership, they only took them over on an excess of \$252,000? A. That is correct.

Q. Why was it that they were not taken over on a basis of \$288,000?

A. Because we probably didn't have as many notes and securities in the bank on March 16th as we had on December 12th, or the securities had changed in the interval. We were doing business right along.

Q. But you would have something else in place of them?

A. Undoubtedly, unless we wrote off some of those notes. I think we charged off some notes on December 31st.

Q. Enough to aggregate this difference?

A. Probably not.

Q. Enough of the notes that were to be transferred to the corporation to cover the difference?

A. Probably not. I wouldn't want to say that.  
[735½]

Q. Can you think of any other reason that you

(Testimony of James W. Hill.)

didn't take it at \$288,000 as proposed by the board of directors?

A. I can't at the present time. You understand they came in and took what securities they wanted, and set aside others which remained the property of the partnership.

Q. Yes, but the resolution passed by the board of directors was that the property was to be taken over on the bases of the examination made by the depositors committee, was it not?     A. Yes.

Q. And their committee reported that there was an excess of \$288,000.     A. That is so.

Q. But when you did take it over, you took it over on a basis of \$252,000.     A. That is so.

Q. The only explanation you can give for the deficiency is what you have given.

A. I think so; probably retired some notes.

Mr. RIDER.—That is all.

#### Redirect Examination.

(By Mr. McGINN.)

Q. Mr. Hill, I will ask you to state whether or not the board of directors or the stockholders received any telegrams from Mr. Chilberg relative to the value of Gold Bar about the time it was turned over to the corporation?

A. About March 12th or thereabouts?

Q. I don't know the time. Somewhere about there.

A. I don't remember whether the board as a board received any telegram, or whether some one of the directors did. But I [736] know that a telegram



(Testimony of James W. Hill.)

came from Mr. Chilberg.

Q. In regard to what?

A. There was a telegram from Mr. Chilberg about that time in regard to the value of Gold Bar in his opinion.

Q. Do you know where that telegram is?

A. I do not, unless it is in the bank.

Q. We have asked them for the telegram, and have not been able to find it, so I want to ask you if you can give the contents of that.

A. I cannot, but it stated a value in his opinion on Gold Bar.

Q. Do you know whether there was also a telegram received from Carl Johanson?

A. Mr. Jonas received a telegram from Carl Johanson.

Q. Do you remember the contents of that telegram?

A. No, I don't now. They were all apparently satisfactory to the board. They were all produced at the time.

Q. Do you know whether they were produced at this meeting of the board of directors?

A. I wouldn't be sure as to that.

Q. Now, at the time this stock was originally subscribed, do you know whether it was over-subscribed or not?

A. My recollection is that at the very first meeting of the proposed stockholders, they over-subscribed it—the capital stock, and were asked at that time to reduce their subscriptions, in order to keep the

(Testimony of James W. Hill.)

amount within the proposed capital stock.

Q. Did you at any time act, or pretend to act, for Mr. R. C. Wood under this power of attorney that has been mentioned here in reference to the subscription for any stock for him in the Fairbanks Banking Company, a corporation?      A. No, sir.

Q. Never at any time?

A. No, sir. [737]

Q. Now, these assets that you state were in the possession of the trustees; they were in the possession of Mr. Dusenbury as register, were they not?

A. Yes.

Q. And he was also acting as assistant cashier of the bank at that time?      A. Yes, sir.

Mr. McGINN.—Minutes of the meeting of the executive committee of the Fairbanks Banking Company held at Fairbanks, Alaska, March 15, 1909. I desire to introduce the following (Reads):

“The following requests from stockholders as to the bank purchasing their stock was considered: H. B. Parkin 10 shares, O. E. Tackstrom 5 shares. It was the sense of the meeting that the bank observe the rule established at a previous meeting of the board wherein it was decided not to buy in any more of the bank’s stock.”

I desire to introduce and read from the minutes of the meeting of the board of directors of the Fairbanks Banking Company held at Fairbanks, Alaska, April 12, 1909 (Reads):

“The minutes of the meetings of the executive committee held on the following dates were read,

(Testimony of James W. Hill.)

and, on motion duly made and seconded, were approved, ratified and passed as the action of the board; March 13, 15 and 18, 1909." That is all.

Further Cross-examination.

(By Mr. RIDER.)

Q. Do you remember the date, Mr. Hill, when the telegram which you were inquired about to Mr. Chilberg was sent or received?

A. It was in November sometime. I don't remember the date. [738]

Q. You are talking about the Tanana Electric Company now, are you not? But you were asked by Mr. McGinn about the telegram being sent to Chilberg? A. In regard to the value of Gold Bar?

Q. Yes. A. It was in the latter part of March.

Q. At the same time these other telegrams were sent to Wood and to Dexter Horton?

A. On or about the same time.

Q. I believe you stated you didn't remember the reply. A. I did not.

Q. Do you remember whether there was any reply or not? A. I am sure—reasonably sure there was.

Q. You are sure there was a reply promptly?

A. I think so.

Q. Do you remember whether the reply got back here by the 14th of March?

A. I couldn't state. There were telegrams produced by Mr. Jonas, and I think they had been sent by him, not by the bank or any officer.

Q. Telegrams sent by Jonas?

A. Yes, sir, I think so.

(Testimony of James W. Hill.)

Q. Do you remember any action that was taken by the bank in reference particularly to the Chilberg telegram?     A. I do not.

Q. I desire to call your attention to a telegram as found in copy book 4 at page 208, dated Fairbanks, Alaska, March 14, 1908, and addressed to R. C. Wood, and signed Fairbanks Banking Company, and ask you if that has any relation to the matter that you are now testifying about (exhibits same to witness).  
[739]

A. The telegram I had in mind was sent, I think, by Jonas to Mr. Chilberg.

Q. Did Mr. Chilberg reply?     A. Yes, sir.

Q. Does this telegram here help you out any as to what Chilberg's answer was?     A. No.

Q. Do you know of the sending of this telegram that is referred to here?     A. I don't remember.

Q. You have no knowledge of this telegram yourself.

A. No, I don't remember sending that telegram.  
Mr. RIDER.—That is all.

Further Redirect Examination.

(By Mr. McGINN.)

Q. Mr. Hill, you remember of Mr. Wood returning in April, 1908, from the states?     A. I do.

Q. Do you remember the time that he signed this agreement of March 16, 1908,—this assignment and transfer of the property from the partnership to the corporation?

A. You mean the actual time the agreement was signed by Mr. Wood?

(Testimony of James W. Hill.)

Q. By Mr. Wood.      A. I think I was present.

Q. Do you remember about what time that was?

A. No.

Q. Who else was present at that time that you remember?      A. I couldn't say for sure.

Q. Well, can you tell of anybody who was present?

A. Captain Barnette was present, and I think one or more of the members of the executive committee.

Q. What transpired at that time?      [740]

Mr. RIDER.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Objection overruled, subject to the objection.

A. Mr. Wood raised some objection to signing, I think.

Mr. MCGINN.—Q. What objection was made and what was done and said?

A. Well, I could not repeat the conversation. But in a general way, he objected to the signing of the agreement, because it set forth that he had subscribed for stock. And then and there the executive committee, or some member of the executive committee, assured him, or called his attention to the minutes of the meeting held in January, at which it was agreed by the original stockholders that Wood and myself could have cash in lieu of stock, if we elected, up to July 1st, and he finally signed the agreement with that understanding.

Q. What minutes?      A. January 5th, I think.

Q. Do you know where these minutes were incorporated at that time?

(Testimony of James W. Hill.)

A. They were set forth in the agreement itself, as I remember.

Q. Were they set forth in the agreement, or in the by-laws of March 12th?

A. In the agreement, I think, was set forth the minutes of a previous meeting.

Q. The minutes of March 12th?      A. Yes, sir.

Q. You say that was shown to him at that time.

A. Yes, sir.

Q. State whether or not he signed it then?

A. He signed it then.

Mr. McGINN.—That is all.

Further Cross-examination.

(By Mr. RIDER.)

Q. You say the original contract was then before Mr. Wood? [741]      A. Yes, sir.

Q. And that written contract contained a clause that he should take stock?      A. It did.

Q. And that was called to Mr. Wood's attention, or he called it to the attention of the executive committee?

A. He called it to the attention of the executive committee.

Q. Then these minutes which you referred to were presented to him.      A. Yes, sir.

Q. Then he signed that written contract.

A. Yes, sir.

Q. And which contained that clause that he would take stock.

A. Yes. With the understanding—(interrupted).

Mr. RIDER.—That is all.



(Testimony of James W. Hill.)

Mr. McGINN.—Let him finish his answer.

A. With the distinct understanding that he and I, for our part of it, still had the privilege of taking cash in lieu of stock. I elected to take stock.

Mr. RIDER.—But you knew, and he knew, at that time—(interrupted). A. Yes, sir.

Q. —that in the written agreement was the provision that he should take stock. A. Yes, sir.

Mr. RIDER.—That is all.

Mr. McGINN.—That is all. [741½]

[Testimony of Volney Richmond, for Defendants.]

VOLNEY RICHMOND, witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

Mr. McGINN.—Q. What is your name?

A. Volney Richmond.

Q. What is your occupation?

A. Superintendent Northern Commercial Company.

Q. How long have you been connected with the Northern Commercial Company?

A. Since its organization in 1901.

Q. What is the business of the Northern Commercial Company? A. Merchandise.

Q. Where are they engaged in business?

A. Throughout Alaska; the Yukon River and tributaries.

Q. They have a station at Fairbanks, Alaska?

A. At Fairbanks, yes, sir.

Q. How long have you been connected with them?

(Testimony of Volney Richmond.)

A. Since 1901.

Q. What position did you occupy with relation of the Northern Commercial Company in the month of April, 1910?

A. I was the local agent of the Northern Commercial Company in 1910 at Fairbanks.

Q. How long had you been in that position?

A. Since the 15th of March, 1905.

Q. I will ask you to state whether or not in that position you became acquainted with the local merchants of the Fairbanks Recording District, and the miners of the district.      A. I was.

Q. And to state whether or not you became acquainted with the financial standing and credit of some of them.

A. I was acquainted with it. [742]

Q. In the month of April, 1910, were you acquainted with C. J. Robinson?      A. I was.

Q. Do you know what his standing was in the community at that time?      A. Good financially.

Q. I will ask you to state whether or not in your opinion you would regard his note for the sum of \$3,105 as a good note.

A. I would. We have given him credit for that amount at that time, or about that time, and more.

Q. You regarded him good for that amount at that time?      A. I did.

Q. April, 1910?      A. April, 1910.

Q. O. E. Tackstrom. Were you acquainted with Oscar Tackstrom?      A. I was.

Q. What business was he engaged in in 1910?

(Testimony of Volney Richmond.)

A. In April, 1910, I think he was a partner of James Thornton in the establishment of Thornton & Tackstrom.

Q. You knew what his financial standing was at that time?     A. It was good.

Q. Would you say that his note for the sum of \$375 was a good note at that time?     A. I would.

Q. T. L. Thurston. This note is secured. You know where Mr. Thurston lived here in 3d Avenue?

A. I did.

Q. Where Lovejoy lives now. You knew what his financial standing was in April, 1910?

A. Thurston's?

Q. Yes.     A. What is the amount of the note?

Q. \$950.00, and it is secured by a mortgage on lot 9 block 1 east, between 3d and 4th avenues, upon the property that we [743] have just mentioned.

A. The house that he lived in at that time, the Lovejoy house?

Q. Yes.

A. The property was worth that amount of money.

Q. In April, 1910?     A. In April, 1910.

Q. Do you know T. C. Brown?     A. Yes, sir.

Q. How long had you known T. C. Brown?

A. T. C. Brown worked for the Northern Commercial Company for about three years.

Q. In what capacity?     A. Carpenter.

Q. Were you acquainted with his financial standing in the month of April, 1910?     A. I was.

Q. Do you know whether his note in the sum of \$500 was good at that time?     A. It was in 1910.

(Testimony of Volney Richmond.)

Q. And you would so regard it?      A. I would.

Q. The note at that time was \$600.

A. Brown was good for \$600 or more at that time.

Q. E. M. Keyes. Were you acquainted with Mr. Keyes in April of 1910?      A. I was.

Q. How long had you known Mr. Keyes?

A. I had known Mr. Keyes at that time for probably three or four years.

Q. What was his occupation?      A. Miner.

Q. Were you acquainted with his financial standing at that time? [744]

A. We were doing business with him, and necessarily were.

Q. I will ask you to state whether or not in your opinion his note for the sum of \$2,400.00 would be considered good in April, 1910?

A. I would so consider it, yes.

Q. Did you know Wiseman & Barclay? Frank Wiseman, who is now chief of police?      A. Yes.

Q. Were you acquainted with Wiseman & Barclay in April, 1910?      A. Yes, sir.

Q. And acquainted with their financial condition at that time?      A. Yes, I was.

Q. I will ask you to state whether or not you would regard their note for \$1543.73 as good in April, 1910?

A. They got in financial difficulties, but I think it was after that date. I think at that date they were good.

Q. Are you acquainted with H. I. Miller?

A. Yes, sir.

Q. You knew him in April, 1910?      A. I did.

(Testimony of Volney Richmond.)

Q. I will ask you to state whether or not you were acquainted with his financial condition at that time, and his financial standing?     A. We were.

Q. I will ask you whether you would regard his note for the sum of \$1546.00 as good in April, 1910?

A. I think in April, 1910, it was good. I think Miller got in trouble the following summer.

Q. Were you acquainted with Sandstrom, Gaidos and Gillis?     A. I was.

Q. Did you know their financial standing in the month of April, 1910?

A. I considered them good at that time. [745]

Q. Would you consider them good for the sum of \$1530?     A. I would.

Q. Do you know Stone & Brandt?

A. I did or do.

Q. Did you know what their financial standing was in the month of April, 1910, and prior thereto—in the month of September, 1909, also?

A. They were considered good. In September, 1909, they were considered good.

Q. Would you say their note for \$4,668.00 was considered good at that time?

A. At that time, yes.

A. Do you know Ray Brumbaugh?     A. I do.

Q. How long have you known Mr. Brumbaugh?

A. Since 1905.

Q. What business was he engaged in here?

A. Mercantile.

Q. Brumbaugh Hamilton & Kellogg?

A. Yes, sir.

(Testimony of Volney Richmond.)

Q. Were you acquainted with their financial standing in the month of April, 1910? A. Yes.

Q. I will ask you to state whether or not you would consider the note of Ray Brumbaugh in the sum of \$7,762.50 as good in the month of April, 1910?

A. I would consider it good.

Q. Do you know Robert Sheppard? A. I do.

Q. What was his business? A. Miner.

Q. Engaged in mining on Fairbanks Creek?

A. On Fairbanks Creek.

Q. Were you acquainted with his financial standing in April, 1910? A. I was. [746]

Q. I will ask you whether or not you would consider his note for the sum of \$1,700.00 as being good in April, 1910? A. Perfectly good.

Q. Do you know J. A. Jackson? A. I did.

Q. He was cashier of the Fairbanks Banking Company. Were you acquainted with his financial standing in the month of April, 1910?

A. Not to any great extent.

Q. I will ask you whether or not you would consider his note for the sum of \$500.00 good at that time?

A. It should have been good for \$500. He was drawing a good salary.

Q. Did you know L. S. Robe? A. I do.

Q. Were you acquainted with his financial standing in this community in the month of April, 1910?

A. I was acquainted with it, yes, sir.

Q. I will ask you to state whether or not you would consider his note for the sum of \$750.00 as good at



(Testimony of Volney Richmond.)

that time?     A. I would so consider it.

Q. Did you know Lew Wing?     A. I did.

Q. Were you acquainted with his financial standing in the month of April, 1910?

A. Not any more than from a salary standpoint.

Q. I will ask you to state whether or not you would regard his note for the sum of \$1500 as good?

A. I would consider it good.

Q. Were you acquainted with Harry Johnson?

A. I was.

Q. What was his business?     [747]

A. Miner on Cleary Creek, and afterwards on Goldstream.

Q. And afterwards went to Iditarod?

A. Afterwards in the Iditarod.

Q. Were you acquainted with the financial standing of Harry Johnson in the community in the month of April, 1910?     A. I was.

Q. I will ask you to state whether or not in your opinion you would reward his note for the sum of \$1,200.00 as being good in April, 1910?

A. I would consider it good.

Q. Do you regard past due paper as not good?

A. Not necessarily.

Q. What is your opinion in regard to past due paper?

A. Past due paper may be perfectly good, and other past due paper may be worthless.

Q. Just the same as paper that is not due may be good—     A. Yes.

Q. —and some of it bad.     A. Yes.

(Testimony of Volney Richmond.)

Q. In your opinion does the mere fact that paper is past due affect the chances of the payment of the note in any way?

A. No, I wouldn't consider it so.

Q. Do you know whether or not the banks of Fairbanks, Alaska, were in the habit of carrying past due paper?     A. I don't know.

Q. State whether or not you know that the banks carried the miners here for some time.

A. Yes, they did. [748]

Q. Mr. Richmond, were you acquainted with Mr. Ed. Chilberg?     A. I was.

Q. Were you acquainted with the Tanana Electric Company?     A. I was.

Q. You were manager of the Tanana Electric Company for a while, were you not?

A. I was appointed manager, but I never took the active management.

Q. Do you remember the negotiations that were carried on by Mr. Chilberg and the Tanana Electric Company?     A. I do.

Q. In the year 1906?     A. I do.

Q. Relative to the obtaining of some money from the Scandinavian-American Bank?     A. I do.

Q. State the circumstances of that to the Court; what you know about it, and how you regard this claim of the Fairbanks Banking Company against the Scandinavian-American Bank on account of the transactions that occurred between Chilberg, the bank, and the Tanana Electric Company.

(Testimony of Volney Richmond.)

Mr. RIDER.—We object to how he regarded that, as incompetent.

The COURT.—Objection sustained. You should call for the facts.

Mr. McGINN.—Q. Just state the facts in regard to it.

A. Mr. Chilberg arrived in Fairbanks in the summer of 1906, and at that time was heavily interested in the Tanana Electric Company. He got several people of Fairbanks interested in the company, and they subscribed for stock on the agreement of Mr. Chilberg of the Scandinavian-American Bank that he would advance \$100,000 for the bank for the building of the water power plant on the Chatanika for the Tanana Electric Company. The construction of the water power was commenced in the summer of 1907, and I don't [749] remember the exact amount expended. The checks were drawn on the Fairbanks Banking Company for the payment of wages and supplies. And during the fall— Just a moment. The advances were made by the Fairbanks Banking Company up to about the 22d or 23d of September, when I think all accounts at that time were taken care of. But a large number of men were still employed in the construction work, and it was understood that the Fairbanks Banking Company would continue to take care of the checks made payable for both labor and supplies.

Mr. RIDER.—Q. Understood by whom?

A. Understood by myself that the Fairbanks Banking Company would take care of these checks

(Testimony of Volney Richmond.)

until my arrival in Seattle when I would see Mr. Chilberg and arrange for the balance of the credit to be sent to the Fairbanks Banking Company. Mr. Chilberg wasn't in Seattle upon my arrival, but had gone east, and it was necessary for me to go to San Francisco immediately, and I wrote him, telling him I would return to Seattle later if necessary. Later the financial panic took place, and Mr. Chilberg advised me by wire that, owing to the financial condition, it would be impossible to advance anything at that time, and advised the appointment of a receiver for the Tanana Electric Company.

Mr. McGINN.—Q. Now, I will ask you, Mr. Richmond, whether or not with your knowledge of all the facts, you regarded this claim of the Fairbanks Banking Company against the Scandinavian-American Bank in the sum of some \$27,000, or something like that—a little more than that—as being a good and valid claim against the Scandinavian-American Bank in the month of April, 1910?

Mr. RIDER.—We object to that as incompetent.  
[750]

The COURT (To Mr. McGINN.).—You mean, all the facts he has detailed?

Mr. McGINN.—Yes.

A. I do. For the reason— (Interrupted.)

The COURT.—It is received, subject to the objection.

A. I do, for the reason that Mr. Chilberg of the Scandinavian-American Bank had agreed to advance to the Tanana Electric Company \$100,000.00,

(Testimony of Volney Richmond.)

and up to that time had advanced only \$43,000.

Mr. McGINN.—You may cross-examine.

Cross-examination.

(By Mr. RIDER.)

Q. You say you are the superintendent of the Northern Commercial Company at this time.

A. Yes, sir.

Q. In 1910 you were its local agent.

A. I was its local agent.

Q. Are you acquainted with Mr. George Preston, a defendant in this suit?     A. I am.

Q. He is also connected with the Northern Commercial Company?     A. Yes, sir.

Q. You are acquainted with Mr. Clark, who is a defendant in this suit?     A. I am.

Q. He is one of the attorneys for the Northern Commercial Company at this time?     A. Yes, sir.

Q. Mr. Richmond. You say you regard the notes which were listed to you—the notes given by the parties to whom your attention was called by Mr. McGinn, in the sums or amounts that he named, as being good in the month of April, 1910.     A. Yes, sir.

[751]

Q. Was your attention called to the fact, or has your attention been called to the fact, that those notes were all past due in April, 1910?     A. No.

Q. Was your attention called to the fact, or had you heard, that some of those notes were past due from one to three years?     A. No.

Q. You were not aware of that?

A. No. I was not.

(Testimony of Volney Richmond.)

Q. Would that change your opinion as to the value of those notes in any way, in April, 1910?

A. Not as to those people.

Q. The fact that the notes were past due from 1 to 3 years wouldn't of itself in any way change your opinion as to the value of those notes?

A. No. For the reason; we were doing business with these people, and we considered them good in April, 1910.

Q. Did you have past due paper of their in April, 1910?

A. No, we don't carry past due paper. We don't handle paper.

Q. The Northern Commercial Company does not carry past due paper, does it?

Mr. McGINN.—He says they don't handle paper.

Mr. RIDER.—You showed he was in the banking business.

The COURT.—Objection overruled.

A. We don't handle paper.

Mr. RIDER.—Q. You don't handle any paper on your accounts? A. Not unless it is secured.

Q. But you require that paper to be paid at maturity, do you not, or taken up?

A. Not necessarily. [752]

Q. Is it your custom to allow paper to become past due from a year to three years?

A. We have had such.

Q. Is that your custom?

A. It is not the custom, no.

Q. Is it your custom to permit the accumulation



(Testimony of Volney Richmond.)

of as much as \$50,000 or \$80,000 of past due paper, and still carry it as a valid asset of the Northern Commercial Company?     A. No, sir.

Q. Referring to the note of Wiseman and Barclay for \$1,543.57, as listed to you by Mr. McGinn, you say that that note was good in April, 1910.

A. I said that I thought it was good in 1910. They got into difficulties, but I think it was the summer after.

Q. Isn't a fact that Wiseman and Barclay, in this Court were adjudged bankrupts on April 11, 1910?

A. That I couldn't say positively. I made the statement that I thought they were in financial trouble a little later, but I couldn't state the exact date.

Q. Do you wish to qualify your statement concerning the paper of Wiseman and Barclay?

A. If they were bankrupt on April 11th, yes.

Q. Their note wasn't good, then.

A. I wouldn't consider it such. I don't know the exact date they went into bankruptcy.

Q. Do you know all the circumstances surrounding these notes which have been listed to you by Mr. McGinn?

A. I know nothing of the circumstances.

Q. You know nothing except that the bank held this particular piece of paper?

A. That is all I know.

Q. You don't know whether any reason existed for its not [753] being collected?

A. No. I do not.

(Testimony of Volney Richmond.)

Q. So far as you know, none existed?

A. As far as I know. I know nothing concerning it one way or another.

Q. You knew Mr. Wood at that time in 1910?

A. I did.

Q. You know he was a good collector of paper, did you not? A. He had that reputation.

Q. A good collector of paper? A. Yes.

Q. And Mr. Jackson also had that reputation?

A. He was the same, had the same reputation.

Q. And Mr. Wesch of the Washington-Alaska Bank had that reputation? A. He did.

Q. And Mr. Parsons had that reputation?

A. Yes, sir.

Q. And so did Barnette? A. He did.

Q. And your opinion of the values of these notes is all based upon the fact that it had no other impairment than that it was merely past due.

A. Yes, sir.

Q. You knew Lew Wing, did you not?

A. I did.

Q. Your attention was called to a note of his of \$150. A. It was.

Q. Did you know that that item was in dispute?

A. I did not.

Q. He was working for the bank at that time?

A. He was.

Q. The bank to whom he owed this paper?

A. He was. [754]

Q. Did you know that he claimed Mr. Barnette ought to pay that paper at that time?

(Testimony of Volney Richmond.)

A. I did not.

Q. You didn't know that when you gave your valuation upon it. A. I did not.

Q. Now, in this matter of this Tanana Electric note, do you know of any agreement that the Fairbanks Banking Company had which bound the Scandinavian-American Bank to guarantee these advances? A. I do not.

Q. You know that the advances that were made to the Tanana Electric Company down to September, 1907, to which you referred, were all made really on the credit of the Tanana Electric Company, were they not? A. That is not my understanding.

Q. What was your understanding? [755]

A. My understanding was that Mr. Chilberg of the Scandinavian-American Bank agreed to put up this \$100,000.

Q. To whom?

A. To the Tanana Electric Company.

Q. Not to the Fairbanks Banking Company?

A. Not to the Fairbanks Banking Company.

Q. You never did understand that he had agreed to put up any \$100,000 to the Fairbanks Banking Company? A. No.

Q. That was a deal purely between Chilberg of the Scandinavian-American Bank and the Tanana Electric Company? A. Yes.

Q. And Mr. Chilberg was vice-president of the Scandinavian-American Bank? A. He was.

Q. But he was president of the Tanana Electric Company? A. He was.

(Testimony of Volney Richmond.)

Q. And the Tanana Electric Company executed a mortgage to the Scandinavian-American Bank for \$100,000? A. Yes.

Q. That was the only mortgage given? A. Yes.

Q. That was the only pledge of the Scandinavian-American Bank for advances?

A. That was the only one.

Q. That didn't relate to the Fairbanks Banking Company, did it? A. It did not.

Q. You testified as a witness in a suit that was brought entitled F. G. Noyes, receiver, vs. Scandinavian-American Bank, in which your deposition was taken here in Fairbanks. A. I think I did.

Q. Your deposition was taken? A. Yes. [756]

Q. Did you in your deposition in any way or manner state that the Scandinavian-American Bank was liable to the Fairbanks Banking Company for those advances?

Mr. McGINN.—Let him show him his deposition. He is interrogating him in regard to a written instrument.

Mr. RIDER.—Q. Do you wish to examine it and see whether you did or not?

A. I don't think I did, but I would like to examine it just the same. (Deposition handed to witness.)

A. That is just as I remember it. (Referring to deposition.)

Q. There is nothing in there about the Scandinavian-American Bank being responsible to the Fairbanks Banking Company for this paper, is there?

A. No, sir.

(Testimony of Volney Richmond.)

Q. I believe you stated to Mr. McGinn, as I understood it, that you regarded the claim against the Scandinavian-American Bank as a valid claim in favor of the Fairbanks Banking Company because of the previous advancements that had been made.

A. Yes, sir. Not because of previous advances. I figured that the Scandinavian-American Bank were duty bound to pay the balance of the \$100,000.

Q. To the Tanana Electric?

A. To the Tanana Electric.

Q. But he was asking you how you regarded the claim of the Fairbanks Banking Company against the Scandinavian-American Bank.

A. I simply figured that when they paid up the balance of the \$100,000 then the Fairbanks Banking Company would get their money.

Q. And this balance of the money would be put up to the Tanana Electric under that mortgage?

A. Yes. [757]

Q. And your thought was that when the Scandinavian-American Bank completed its contract with the Tanana Electric Company and put up the \$100,000, that the Tanana Electric would pay the Fairbanks Banking Company. A. I did.

Mr. RIDER.—That is all.

**[Testimony of F. W. Carter, for Defendants.]**

F. W. CARTER, a witness for defendants, after being duly sworn, testified as follows, to wit:

Direct Examination.

(Mr. McGINN.)

Q. What is your name? A. F. W. Carter.

(Testimony of F. W. Carter.)

Q. Where do you reside?

A. At the present time at Fairbanks.

Q. How long have you resided in Alaska? [758]

A. Fourteen years.

Q. And have you resided at Nome?

A. At Nome.

Q. And have you at the Iditarod? A. Yes.

Q. Where were you living in 1905, and up to about the year 1910?

A. Well, I lived from 1904 until the fall of 1909 in Fairbanks.

Q. What business were you engaged in during that time?

A. From 1905 until the fall of 1909 I was engaged in the bottling and soda water business.

Q. I will ask you to state whether or not you were acquainted with the value of the stock of the company that was known—the soda works that you were connected with was known as the Tanana Bottling Works? A. Yes, sir.

Q. You were in charge of the business at that time?

A. I was treasurer for the corporation in 1906 and from 1906 up to the fall of 1909.

Q. I will ask you to state whether or not you were acquainted with the value of their stock say in 1910, in April? A. I was.

Q. I will ask you to state whether or not, in your opinion, you would regard 45 shares of the Tanana Bottling Works stock as worth \$5,000 in April, 1910?



(Testimony of F. W. Carter.)

(Plaintiff objects as irrelevant and immaterial. Overruled.)

A. Well, I wouldn't take that price for my stock at that time. I had stock in the bottling works myself at that time.

Q. You regarded it at that time of that value?

A. Yes, sir.

Mr. McGINN.—That is all.

Mr. RIDER.—Stand aside. [759]

Mr. McGINN.—At this time we desire to introduce in evidence the minutes of the directors' meeting of the Fairbanks Banking Company from the time of its organization up to the 12th day of April, 1910, for the purpose of showing the care that was exercised by them in loaning money of the Fairbanks Banking Company, including the minutes of the executive committee.

Mr. RIDER.—That is objected to as irrelevant and immaterial. It might have some bearing in the case as to the notes in controversy, but, as to the notes not in controversy, it is irrelevant and immaterial.

The COURT.—It seems to me that is too general an offer.

Mr. McGINN.—I desire my offer to show that the minutes show that when loans were made, and the matter first came up to the executive committee, that it was considered by them, and afterwards put to the board of directors. I want to show that the directors rejected more loans than they gave; that the matter was always thoroughly discussed by them. And the minutes show that they exercised the great-

(Testimony of F. W. Carter.)

est degree of care in making loans, and in that way became acquainted with all the loans of the institution.

Mr. RIDER.—I think that it is irrelevant and immaterial for there is no charge against the directors for making loans in a negligent manner; they are not charged with negligence in making loans.

The COURT.—I think the offer itself is too general. If you have anything in particular you want to offer having any bearing on the issues, offer it.

Mr. McGINN.—I will illustrate what I want to show (Reads from minutes.)

The COURT.—I think the offer should be limited to matters [760] in controversy in this case. The form of the offer as made is too general.

**[Testimony of E. R. Peoples, for Defendants.]**

E. R. PEOPLES, a defendant, sworn as witness for defendants, testified as follows, to wit:

Direct Examination.

(By Mr. HEILIG.)

Q. Give your name.      A. E. R. Peoples.

Q. What is your business?      A. Merchant.

Q. Where do you reside at this time?

A. Fairbanks.

Q. How long have you resided in Fairbanks?

A. Continuously since 1905.

Q. Where were you engaged in the mercantile business prior to coming to Fairbanks?

A. At Skaguay, Alaska.

Q. Any other place?

(Testimony of E. R. Peoples.)

A. Prior to coming to Skaguay, in the State of Washington.

Q. At any place in the Yukon Territory?

A. No.

Q. On the Yukon River?     A. At Eagle.

Q. For how long?     A. About two years.

Q. What has been your business since you have been engaged in business?

A. General store business.

Q. Were you ever at any time a banker?

A. No, sir.

Q. Or connected with banking institutions?

A. For a short time I was a director of the Fairbanks Banking Company.

Q. How did you come to be elected as a director of the [761] Fairbanks Banking Company.

A. Along in the fall of 1908 Mr. Dusenbury asked me would I accept the office of director. I told him I would rather not, being somewhat busy with my own business. Well, he said at that time of the year there was not so much doing and he would like to have me come down. I told him if he could get anybody else, I would rather he would do so, but if he couldn't find anybody I would help him out if possible.

Q. At that time how much stock did you have in the Fairbanks Banking Company?

A. A thousand dollars' worth. Ten shares, I believe.

Q. How did you come to be a stockholder in that bank?

(Testimony of E. R. Peoples.)

Mr. RIDER.—I object as irrelevant and immaterial.

Mr. HEILIG.—I want to show he is one of the original subscribers to the stock.

The COURT.—That appears here.

Mr. HEILIG.—I think so too.

Q. How much did you pay for your stock?

A. I paid \$1000.

Q. And it is in evidence now that you sold your stock to Mr. Dusenbury? A. Yes, sir.

Q. How did you come to sell your stock?

A. Mr. Dusenbury owned a lot alongside my building, that I was desirous of getting, and I made a proposition to him, and we were unable to agree as to the price. Well, I took the matter up with Mr. Wood.

Q. That is Mr. Wood, the president of the First National Bank?

A. Yes, sir. Mr. Wood at that time was in the real estate business. And he finally made the deal with Mr. Dusenbury; and in the payment of the purchase price for the property [762] we paid him part cash by a check, and the balance stock.

Q. How much did you pay him in cash?

A. \$1500.

Q. And what was it agreed that the value of the stock was at that time? A. \$1000.

Q. Do you remember when this was? Can you refresh your memory from the date of your check?

A. Yes, sir. The payment was made April 24, 1909.

(Testimony of E. R. Peoples.)

Q. And at the same time you transferred your stock?     A. Yes.

Q. And you resigned as a director at that time?

A. Yes, sir.

Q. You had no other stock in the institution?

A. No, sir.

Q. And after that you paid no attention to the corporation?     A. No, sir.

Q. And attended none of their meetings?

A. No.

Q. Did you attend any of the meetings of the executive committee of that bank while you were a director?     A. No, sir.

Q. You never were a member of the executive committee?     A. No, sir.

Q. The only meetings that you attended, as appears from the minutes, were the meetings of the board of directors upon five occasions?

A. Yes, sir.

Q. There were apparently two meetings that you didn't attend. It appears that at the first meeting of the directors that you attended, a report was made that application had been made by Mark L. Sullivan to surrender stock to the [763] bank; that the executive committee had refused to accept the surrender. Do you remember anything in regard to the facts? Do you recollect anything in regard to that matter coming up before the board of directors?

A. Not as to the date. I remember that they refused to accept the stock, or to buy any stock.

Q. Laid that down as the policy of the board at

(Testimony of E. R. Peoples.)

that time?     A. Yes, sir.

Mr. HEILIG.—Q. Do you know anything in regard to the circumstances surrounding the surrender of a few other shares of the bank during the time you were a director? Was it called to your attention?

A. I think not. There may have been one item.

Q. Were you aware that any of the employees of the bank had accepted the surrender of any other shares of stock than the Strandburg and Johnson stock, and the one item that you refer to?

A. No, sir.

Q. Was it in any way called to your attention that, for instance, the stock of John Clifford was apparently surrendered to the bank February 9, 1909, and \$200 placed to his credit? Were you ever aware of that transaction?     A. No, sir.

Q. Until it was recently called to your attention?

A. No, sir.

Q. No report of such transactions were made to the board of directors?     A. No, sir.

Q. Do you remember anything surrounding the surrender on February 19, 1909, of George Jestel's stock of \$500?

A. My memory is not clear on that, but I believe it was that stock. Jestel was in bad circumstances, or had been sick, [764] and was inquiring for a loan, and it was referred to the committee, and I think that is the stock.

Q. Referred by whom?     A. By the directors.

Q. It was brought up before the board of directors?     A. And referred to the committee.



(Testimony of E. R. Peoples.)

Q. Did you learn afterward what was done in regard to it; I mean, while you were a director did you learn?     A. I think not.

Q. It was not again brought to your attention in any manner?     A. No, sir.

Mr. HEILIG.—That is all.

Cross-examination.

(By Mr. RIDER.)

Q. Mr. Peoples. You attended the meeting of October 14, 1908, to which your attention was called, when the matter of the Sullivan stock was brought up?     A. Yes, sir.

Q. The record of that meeting, as shown by the minutes of that transaction, is as follows (Reads):

“The matter of the disposition of the request of M. L. Sullivan regarding the bank taking up his stock and interest in the bank was brought up, for consideration. After full discussion, it was decided on motion of Robinson seconded by Ryan that no action be taken.”

That is the record of the transaction in the Sullivan [765] matter, is it not?

A. If my memory serves me right, it was the intention of the bank at that time not to accept any stock.

Q. And such declared to be the policy of the bank?

A. That was declared to be the policy.

Q. Had you known the previous policy of the bank in that matter?     A. I had not.

Q. You didn't adhere to that policy very closely during the time you were a director?     A. Yes, sir.

(Testimony of E. R. Peoples.)

Q. You were a director on February 13, 1909?

A. Yes, sir.

Q. And at that time the matter of the Jestel stock came up?     A. I don't remember just the date.

Q. You were present when the matter of the Jestel stock was taken up?     A. I think so, yes, sir.

Q. And the record shows that on February 13, 1909, following the declaration of the policy you have spoken of as to the Sullivan stock, this action was taken. (Reads.) And the record shows you were present at that meeting:

“The matter of the disposition of the Jestel stock was brought up for consideration, and it was the sense of the meeting that its disposition be left to the officers of the bank.”

You had changed your policy at that time?

A. Well, there may have been some circumstances surrounding it.

Q. But you didn't adhere to that policy which you say was declared respecting the Sullivan stock?  
[766]

A. That was the general policy.

Q. You didn't adhere to it respecting the Strandberg Brothers stock, did you?     A. Yes, sir.

Q. You took up the Strandberg Brothers' stock?

A. Well, we considered it the best policy to do it for the bank in the settlement of the loan.

Q. You stated it was the declared policy of the bank that you would take up no stock?     A. Yes.

Q. Then you abandoned the policy as to Strandberg's stock and the Jestel stock specifically, did you not?

(Testimony of E. R. Peoples.)

A. Well, I can't say that we abandoned it. No.

Q. You did take up those two items of stock?

A. Yes, but we were forced to do it under the conditions that surrounded those two accounts probably.

Q. Now, at the time of the sale of your stock to Mr. Dusenbury, you say that stock went in in part payment for a piece of property that you bought from Mr. Dusenbury? A. Yes, sir.

Q. And there was considerable negotiating back and forth between you and Mr. Dusenbury as to the amount which would be paid for that property?

A. I wouldn't say there was considerable. Mr. Dusenbury asked me \$3,500.00 for the property, and I considered that was pretty high, and I made him an offer.

Q. What offer did you make him?

A. I made him an offer of \$2,000, and he wouldn't accept that. [767] So I took the matter up, then, with Mr. Wood, and told him I would give \$2,500.00.

Q. Was that offer a cash offer of \$2,000?

A. The terms of it were not stated at that time.

Q. Was it contemplated as a cash offer of \$2,000 at that time? A. I presume it was at that time.

Q. And he wanted \$3,500 cash? A. Yes, sir.

Q. When did the matter of putting the stock in on this deal come into it?

A. When he agreed to accept the \$2,500. Then I made the proposition to him that I would give him \$1,000 Fairbanks Banking Company stock, and \$1,500 cash.

(Testimony of E. R. Peoples.)

Q. You were taking his property at \$2,500, and paying him \$1,500 in cash, and \$1,000 in stock?

A. Yes, sir.

Q. That is the way you finally consummated your deal? A. Yes, sir.

Mr. RIDER.—That is all.

Redirect Examination.

(By Mr. HEILIG.)

Q. Mr. Peoples, were you acquainted with Frank Wiseman and Robert Barclay in April, 1910; Wiseman the present Chief of Police, and Barclay?

A. Yes, sir.

Q. They were operating at that time on Treasure Creek? A. I think so.

Q. Did you have any business in your mercantile establishment at that time with them? A. No, sir.

Q. Or prior thereto? [768]

A. I have done business off and on with Mr. Wiseman for a great number of years.

Q. I would ask you whether you would consider a note for \$1,543.57 good on April 12, 1910, when secured by a mortgage on a 35 horse-power mining plant then on Treasure Creek?

A. Was that a complete plant?

Q. A complete plant, yes, sir.

A. Yes, sir.

Mr. HEILIG.—Now, I am not able to state at this time whether these minutes were all read in evidence. I mean those with reference to the surrender of stock. I want to read in an extract from the minutes of the meeting of the executive committee of

(Testimony of E. R. Peoples.)

September 14, 1908, which was approved at the meeting of the board of directors held October 14, 1908, which was the first meeting that Mr. Peoples attended as a director, to this effect (Reads):

“Minutes of special meeting of the executive committee Fairbanks Banking Company, held September 14, 1908.”

Which minutes were read to the board of directors at a meeting on October 14, 1908, and approved. I want to read this extract (Reads):

“The matter of the bank taking over Mr. Hans Stark’s stock in the company was brought up for discussion, and it was the sense of the meeting that it was not policy at this time to continue taking over stockholders’ interest.”

These minutes were all read at the following meeting of the board of directors held October 14, 1908, being the first meeting that Mr. Peoples attended. We have already referred to the fact that the minutes of the board of directors of October 14, 1908, show that they also refused to take [769] action upon the application of Mark Sullivan to take over his stock.

Now, I desire to read from the minutes of the executive committee of November 5, 1908, which were read and approved at a meeting of the board of directors on November 12, 1908, with reference to the making of the Strandberg loan. This is under a meeting of the executive committee on November 5, 1908 (Reads):

“The matter of a loan to Strandberg of \$15,000

(Testimony of E. R. Peoples.)

due June 1, 1909, was discussed. It was moved by Jonas, seconded by L. N. Jesson, that a loan of \$15,000 to Strandberg Brothers be made on the security of their 110 shares of Fairbanks Banking Company stock and notes aggregating \$2,500. Carried."

Mr. RIDER.—That was approved on what date?

Mr. HEILIG.—On December 12, 1908.

I want to read from the minutes of the executive committee on February 3, 1909 (Reads):

"A communication from John E. Thrash of Seattle, Washington, advising that he held a block of 25 shares of Fairbanks Banking Company stock for a client of his and was desirous of disposing of the same, and asking for information as to the value of the stock and if the bank desired to purchase same. It was the sense of the meeting that an answer be directed to him that the bank did not desire to buy any stock at the present time, and that they furnish the last published statement of the bank."

I desire to read from the minutes of the executive committee of March 15, 1909, which were read and approved by the board of directors on April 12, 1909 (Reads):

"The following requests from stockholders as to the [770] bank purchasing their stock was considered; H. B. Parkin 10 shares, O. E. Tackstrom 5 shares. It was the sense of the meeting that the bank observe the rule established at a previous meeting of the board wherein it was decided not to buy in any more of the bank's stock."

Mr. HEILIG.—That is all.



(Testimony of E. R. Peoples.)

Further Cross-examination.

(By Mr. RIDER.)

Q. Mr. Peoples, your attention has been called by Mr. Heilig to the minutes of the meeting of the executive committee held on September 14, 1908, approved by the board of directors upon October 14, 1908, wherein action was taken with reference to Hans Stark's stock. You remember that?

A. Yes, sir.

Q. The record shows that at that same meeting of the board of directors, October 14, 1908, which you attended, that the minutes of the board meetings—that is, the board of directors—of September 12th at 3:30 P. M., and September 12th at 9 P. M., were read and approved as read, and I wish to read in evidence the action of the board had on September 12th, respecting the Hans Stark stock (Reads):

“Mr. Hans Stark requested that the board take over his stock as he intended leaving the country for good. On motion of Jonas, seconded by Robinson, it was the sense of the meeting that the bank take back the stock of Mr. Hans Stark and pay him therefor par value. Motion carried.”

A. What date was that?

Q. That was approved by the board October 14, 1908, and you were present at the meeting of October 14, 1908. The action of the board was taken on September 12, 1908, and the record shows that the minutes of September 12, 1908, were read and [771] approved by the board on October 14, 1908.

Mr. HEILIG.—That was on September 12th.

(Testimony of E. R. Peoples.)

What I read was the action of the executive committee on September 14, in which they refused to take it.

Mr. RIDER.—Certainly. The executive committee passed the action you read, and it was approved on September 12th, and on September 12th the board took the action which I read, and it was also approved on October 14th by the board.

Mr. HEILIG.—You mean the executive committee?

Mr. RIDER.—No, the board.

Mr. HEILIG.—You say the board of directors met on September 12th?

Mr. RIDER.—On September 12, 1908.

Mr. HEILIG.—That was prior to Mr. Peoples—

Mr. RIDER.—But the minutes were approved on October 14, when Mr. Peoples was present.

The COURT.—Those matters are in evidence. The Court understands it.

Mr. RIDER.—Q. With reference to that Wiseman and Barclay loan. You know that Wiseman and Barclay were adjudged bankrupts in April, 1910?

A. I didn't know that.

Q. You spoke about some mortgage on some machinery that secured their loan, did you not?

A. It was mentioned as a complete mining plant, a 35 horse-power mining plant.

Q. I understood you to say there was a 35 horse-power boiler that secured that loan.

A. Mr. Heilig's question was, would that security

(Testimony of E. R. Peoples.)

be good for \$1,500 on a complete 35 horse-power mining plant.

Q. Do you know whether the bank had such security?

A. That was not the question asked. [772]

Q. You are just assuming that a mortgage so secured would be good.

A. He asked if a mortgage in a 35 horse-power mining plant would be good for \$1,500, and I answered that it would.

Q. That is the way you understood it? A. Yes.

Mr. RIDER.—That is all.

[**Testimony of C. Harry Woodward, for Defendants.**]

C. HARRY WOODWARD, a witness for defendants, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. McGINN.)

Q. What is your name?

A. C. Harry Woodward.

Q. Where do you reside? A. Fairbanks.

Q. How long have you resided in Fairbanks?

A. Since 1904.

Q. What has been your business during that time?

A. Real estate and broker business.

Q. As such, you have become acquainted with the values of real property in the town of Fairbanks, Alaska? A. Yes, sir.

Q. I will ask you whether or not you are acquainted with the property situated in the town of Fairbanks, Alaska, known as lot 3 in block 5 east, corner of 4th and Hall Street, being the property

(Testimony of C. Harry Woodward.)

that was owned by Ed. Cathcart?

A. I know the location all right.

Q. Did you know that property in April, 1910?

A. Yes, sir.

Q. Acquainted with the value of that property at that time? A. Yes, approximately. [773]

Q. I will ask you to state whether or not in your opinion that lot that I have described was good for the sum of \$227?

A. Well, I consider the lot worth probably \$200 or \$250. It was a whole lot.

Q. Are you acquainted with T. L. Thurston?

A. Yes, sir.

Q. Do you know the lot and the residence that he bought from Mrs. Schmidt? A. Yes, sir.

Q. Situate over here on 3d Avenue?

A. Yes, sir.

Q. Were you acquainted with that property in the month of April, 1910? A. Yes, sir.

Q. I will ask you whether or not in your opinion that property was worth sufficient to satisfy a claim of \$950, or whether it was worth that amount, or more than \$950, in April, 1910?

A. Yes, sir, it was worth more.

Mr. McGINN.—Cross-examine.

Cross-examination.

(By Mr. RIDER.)

Q. Mr. Woodward, referring to the Cathcart property in April, 1910. I didn't understand the amount you stated you considered the whole lot worth?

A. I consider a lot 50 by 150 in that location worth from \$200 to \$250.

(Testimony of C. Harry Woodward.)

Q. Do you know whether there was a whole lot in this Cathcart property?     A. I do not.

Q. What would you consider that 25 foot lot worth in April, 1910?     A. 25 by 150? [774]

Q. Yes.

A. Well, I don't think it would be worth over \$150.

Q. Do you know the condition of the Cathcart cabin in April, 1910?

A. I understand it was burned down.

Q. There was nothing there but the lot, or part of a lot.

A. That is what I understood, but I don't know when that occurred.

Q. And part of the lot, 25 feet—

A. I don't think would be worth more than \$150.

Mr. RIDER.—That is all.

**[Testimony of Luther C. Hess, for Defendants.]**

LUTHER C. HESS, a witness for defendants, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. McGINN.)

Q. What is your name?     A. Luther C. Hess.

Q. How long have you resided in Fairbanks?

A. Since 1903.

Q. Since residing in Fairbanks, what have you done?

A. Well, I was assistant United States Attorney for a *whole*, and I have been mining and banking.

Q. What bank are you connected with?

A. The First National Bank.

Q. What position did you occupy in that bank?

(Testimony of Luther C. Hess.)

A. Cashier.

Q. In what years?      A. 1905.

Q. When did you sever your connection with the First National Bank?

A. I think in the fall of 1905, or winter of 1905.

[775]

Q. Since that time you have been engaged principally in mining.      A. Principally in mining.

Q. Are you acquainted with William James?

A. Yes, sir.

Q. Are you acquainted with the property located on Fairbanks Creek in this recording district?

A. Yes, sir.

Q. Are you acquainted with the James Fraction between 8 and 7 below, on Fairbanks Creek; 8 bench, first tier, left limit Fairbanks Creek; and 4 first tier, left limit of Fairbanks Creek?

A. 4 above or below?

Q. 4 below.

A. Yes, I know those locations.

Q. Are you acquainted with those properties and the value of them in April, 1910?

A. I could give the approximate value.

Q. I will ask you to state whether or not in your opinion those properties were ample security for the sum of \$508.42.

Q. What would you regard to value of that property at this time?

A. I would regard to value at the present time more than that and there has been a good deal of gold taken out of the fraction at least.



(Testimony of Luther C. Hess.)

Q. Did you know D. W. Truitt?      A. Yes, sir.

Q. Were you acquainted with the property known as Number 8 above, Dome Creek, that was owned by him?

A. Well, I don't remember who owned it, but I am acquainted with Number 8 above.

Q. Were you acquainted with the value of that property in [776] April, 1910.

A. That is the creek claim?

Q. Yes.      A. Yes.

Q. What did you regard the value of that property in April, 1910?

A. I should think that property at that time would be worth at least \$1,000.

Q. You would regard it ample security for \$1,000?

A. Well, it would be, I think, worth \$1,000 at that time.

Q. Would you regard a three-quarters interest in 8 above on Dome Creek, with a 25 horse-power mining plant located on the claim as sufficient security for the sum of \$1,000?      A. Yes, sir.

Q. Did you know Bob Sheppard?      A. Yes, sir.

Q. Were you acquainted with his financial standing in this community in April, 1910?

A. I knew his reputation as far as his financial standing goes, if that is what you mean.

Q. Did you know what property he owned in the Fairbanks Recording District?

A. Yes, I know some of the property.

Q. What property did he own?

A. He owned property on Goldstream at that time,

(Testimony of Luther C. Hess.)

and I think he owned some on Fairbanks Creek.

Q. I will ask you to state whether or not you would consider his note for the sum of \$1,700 as being good?

A. Yes, sir.

Q. You would consider that good to-day, wouldn't you? A. I should think it ought to be good.

Q. Did you know Max Altman?

A. Slightly. [777]

Q. Are you acquainted with the claim known as Number 7 below on Cleary Creek?

A. That is the creek claim?

Q. Yes. A. I am.

Q. I will ask you to state whether in your opinion a mortgage on an undivided one-half interest in the lower one-half of 7 below on Cleary Creek was good in April, 1910, for the sum of \$790? A. Yes, sir.

Q. You are acquainted with that property?

A. I am acquainted with that property down there.

Q. Are you acquainted with Harry Johnson?

A. Yes, sir.

Q. Did you know his financial standing in this community in April, 1910?

A. I think Johnson was out on Goldstream at that time. Yes, I think so.

Q. I will ask you to state whether or not you regard his note in the sum of \$1,200.00 as good in April, 1910?

A. Yes, sir. It was good at that time.

Q. Did you know R. M. McMullen?

A. I am not certain whether I did or not.

Q. Are you acquainted with the property known

(Testimony of Luther C. Hess.)

as 4 above Discovery, first tier, right limit, of Dome Creek?     A. Yes, sir.

Q. I would ask you whether or not you would regard an undivided one-quarter interest in that property, in April, 1910, as good for the sum of \$1,000.

A. That 4 is the property that has been operated by Fraker & Nelson out there. They have been operating on that ground up to the present year. They operated there some, I [778] think, last year, and that has always been considered very good property. Yes, it would have been worth that.

Q. You would regard that as good for the sum of \$1,000?

A. Yes, sir. I know that same years before that, that \$25,000 was reported to have been offered for a quarter interest in that claim. I didn't know that McMullen owned a quarter interest in that.

Q. Are you acquainted with Ray Brumbaugh?

A. Yes, sir.

Q. This one-quarter interest of McMullen's that we have been talking about is in 4 above Dome Creek.

A. Oh, I was thinking of Little Eldorado. That is a different piece of property. 4 above on Dome Creek was originally located by Bridges, and operated by Hamilton and Nolan for a number of years, and up to last year operated by William Canning. In 1910 it was certainly worth the sum of money mentioned.

Q. That is, a quarter interest would be worth more than that.     A. Yes, sir, I think so.

Q. Are you acquainted with Ray Brumbaugh?

(Testimony of Luther C. Hess.)

A. Yes, sir.

Q. Were you acquainted with his financial standing in this community in the month of April, 1910?

A. I was acquainted with his business standing.

Q. I would ask you whether you would regard his note for the sum of \$7,752.62 as good at that time?

A. Yes, sir.

Q. You knew what business he was engaged in here?     A. Yes, sir.

Q. What business?

A. He was in the hardware business; he and Mr. Hamilton and [779] Mr. Kellogg.

Q. Was it a business of some size?

A. One of the principal businesses of that character in this community, and also in the Iditarod, I think, at that time.

Q. They handled mining machinery?

A. Yes, sir.

Q. Have you any idea of the volume of stuff they handled during those years?

A. I should think they were handling from one to two hundred and fifty thousand dollars worth, knowing the business they were doing.

Q. Do you know Harry Cribb?     A. I do.

Q. Did you know him in April, 1910?

A. Yes, sir.

Q. Do you know what property he owned in the town of Fairbanks, Alaska?     A. Yes, sir.

Q. I would ask you whether you would consider the note of Harry Cribb for \$1,001.60 in April, 1910, as good?     A. Yes, sir.

(Testimony of Luther C. Hess.)

Q. And particularly if it was secured by a mortgage on buildings and lots on the corner of 4th and Cushman Street known as the Gordon Glass Block, and the residence now known as the Herpick residence. A. Yes, sir.

Q. You would consider the security good?

A. It certainly would be good to-day.

Q. Would you consider Cribb himself good for it without security?

A. I think it was in 1910 that I took his note on a little deal for \$500 without any security, and he paid it.

Q. I would ask you whether or not you would regard the note of W. Sam Clark, Lou B. Clark, F. J. Mace, and J. A. Clark. [780] as good for the sum of \$800 in the month of April, 1910? A. Yes, sir.

Q. I will ask you to state whether or not you would regard the note of W. Sam Clark, Richard H. Stafford and John A. Clark as good for the sum of \$250.00 in the month of April, 1910? A. Yes, sir.

Q. You were acquainted with the financial standing of Frank Mace, were you? A. Yes, sir.

Q. Were you acquainted with the financial standing of John A. Clark?

A. Yes, sir, reputed. I don't know just what a man's business is.

Q. But, financially, they stood well in the community.

A. Yes. I probably knew more about Mace's standing than any of the rest.

Q. Are you acquainted with A. R. Heilig?

(Testimony of Luther C. Hess.)

A. Yes, sir.

Q. State whether or not you regard his note—A. R. Heilig and Leroy Tozier's note in the sum of \$500 as good in April, 1910? A. Yes, sir.

Q. Do you know John Moe and Schroeder? Schroeder used to be in the saloon business down here.

A. I don't recollect Schroeder. I suppose I knew him.

Q. You know John Moe? A. Yes.

Q. You have known him for some time?

A. Yes, sir.

Q. I will ask you to state whether or not you regarded the note of John Moe for the sum of \$180.00 as good in the month of April, 1910? A. Yes, sir.

Q. It is good to-day, isn't it?

A. I should think so. [781]

Q. Are you acquainted with R. R. Myers, the dentist? A. Yes, sir.

Q. Are you acquainted with the financial standing in this community of Doctor Myers in the month of April, 1910? A. Yes, sir.

Q. You know him, do you not?

A. I know Doctor Myers.

Q. You know him quite well? A. Yes, sir.

Q. I will ask you to state whether or not in your opinion his note in the sum of \$1000 would be considered good in the month of April, 1910?

A. The doctor had met with some reverses in mining, and he probably owed a good deal more than \$1000, but if I had owned that note I wouldn't have



(Testimony of Luther C. Hess.)

been at all afraid but what it would have been paid.

Q. You would like to have his note for that amount now?

Mr. RIDER.—We object as irrelevant, incompetent and immaterial.

Mr. McGINN.—Are you acquainted with Jack Baird?

A. Yes.

Q. Would you regard his note good for the sum of \$2,000 in the month of April, 1910?

A. I think Mr. Baird at that time was in the Iditarod, or went down there soon after. I don't know just when, and he was connected in some way with Mr. Griffin down there, and has later been conducting a business of his own, and that note ought to be worth its face value now. It ought to be worth more than that.

Q. Are you acquainted with S. D. McIlroy? He was commonly known as "Tex" McIlroy here.

A. Yes, sir.

Q. You were acquainted with him in April, 1910?

A. Yes, sir. [782]

Q. State whether or not in your opinion his note for the sum of \$100 was good in April, 1910.

A. Well, I don't whether I could say exactly that in April, 1910 it was good, but I know that since that time McIlroy has had property here that was valued at a good deal more than \$100. If he owned the property down on Wendel avenue, which was reputed to be his, it was worth a good more than that. About

(Testimony of Luther C. Hess.)

that time, or a little later, he was interested on Chatham Creek in quartz property.

Q. He sold out there for quite a large sum of money?

A. No big sum of money, but he got several times that much money out of it. And he had that for some time.

Q. He always paid his debts?

A. He was always regarded as good for a small amount.

Q. He was a man that would pay his bills?

A. So far as I know, yes.

Q. Are you acquainted with the property known as the Royal Hotel, situated on First Avenue?

A. Yes, sir.

Q. The Sorenson brothers owned it.

A. Yes, sir.

Q. I will ask you to state whether or not in your opinion that property was worth the sum of \$4,000 in the month of April, 1910?

A. I don't know just how much of a lot that includes. Does it include more than the building?

Q. I understand the lot runs back to Second Avenue. Does it not, Mr. Stewart?

Mr. SIDNEY STEWART.—I don't think it does go clear through.

WITNESS.—I think it includes some little buildings on the side. It ought to have been worth that at that time, but it probably wouldn't be worth that at this time.

Mr. McGINN.—Q. Did you know John Hedman?

(Testimony of Luther C. Hess.)

A. Yes. [783]

Q. I will ask you whether or not you would regard his note in April, 1910, for the sum of \$250 as being good? A. Secured or unsecured?

Q. Secured by a mortgage on 280 cords of wood and two horses on Ester Creek?

A. It ought to be good.

Q. You advanced him money?

A. I loaned him some money in the latter part of 1909, and collected it. I think I made the loan on the 29th day of March, 1910. He always had the reputation of paying his bills, and I had no particular trouble in collecting what I had loaned him.

Q. Here is a mortgage dated the 30th day of November, 1908, by and between F. C. Wiseman and L. Barclay, both of Fairbanks, Alaska, and the Washington-Alaska Bank, to secure the sum of \$1,680, witnesseth: That said parties of the first part, for and in consideration of the sum of \$1,680 lawful money of the United States to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey and mortgage unto said parties of the second part, its successors, assigns and representatives forever, all—

Mr. RIDER.—Do you intend to read that lay?

Mr. McGINN.—I want to show that they mortgaged their leasehold estate in that portion of the Tonasek Association claim, situate on Treasure Creek, tributary of Vault Creek, in the Fairbanks Recording District, Territory of Alaska, the lower 865 feet

(Testimony of Luther C. Hess.)

of that part of the divided Tonasek Association claim which is owned by the above-named lessors, and which part at the downstream end adjoins Conta & Mack's and Quinn's upper lines. Whereas the parties of the first part in this mortgage have a 75 per cent lay, and the [7831½] parties of the first part herein hereby mortgage to the parties of the second part all their right, title and interest in and to said leased premises, and also the 35 horse-power Pennsylvania boiler, one Little Giant hoist, one self-dumper, and all boxes, and cables, and all other personal property situate upon said above described leased premises. And this mortgage was recorded and is now on file in the office of the recorder of the Fairbanks Recording District.

Mr. RIDER.—What was that mortgage given for?

Mr. McGINN.—For \$1600.

Q. Would you consider the plant described in there as worth the sum of \$1543.57?

A. A complete mining plant. Yes, sir.

Q. Such as is described in the mortgage?

A. Yes.

Mr. McGINN.—That is all.

(By Mr. HEILIG.)

Q. Mr. Hess, in view of what you have testified about your long residence here, and the business in which you have been engaged, I will ask you to state whether or not you know the common practice of the banks with reference to loaning money to miners in this vicinity to develop their claims.

A. Yes, sir, I think so.

(Testimony of Luther C. Hess.)

Q. Will you state for the purpose of the record, and the information of the Court, just what the ordinary transaction was when a miner took a lease upon a piece of undeveloped [784] property,—mining property,—and found what apparently was the paystreak.

Mr. RIDER.—Objected to as irrelevant and immaterial.

(Argument. Objection overruled.)

Mr. HEILIG.—Q. What was the almost universal practice of a miner under those circumstances?

A. If a miner had taken a lease on property that he supposed had value, or he had already sunk a shaft and shown value, and was unable to finance the proposition himself, he usually obtained some credit from the merchants—a considerable credit usually—then, in order to pay necessary bills, he usually borrowed from the banks, sometimes giving a mortgage on his machinery and sometimes not.

Q. And a mortgage on his leasehold?

A. Sometimes a mortgage on his leasehold.

Q. The bank having made such a loan, what was the practice of the bank when the loan fell due?

A. If the man was able to go on, or if there was any chance of him going on, the bank would be very careful not to put him out of commission, because it would stop the development of the country and stop the operations.

Q. In your experience have you observed many cases where loans of that kind have been made resulting in great profit to the borrower and to the bank?

(Testimony of Luther C. Hess.)

Mr. RIDER.—We object as irrelevant and immaterial.

The COURT.—He may answer, subject to the objection.

A. I know that that has been almost the universal practice with the banks, and most of those have been paid.

Q. From your experience, would you say that it was an exercise of good judgment on the part of the bank not to force the collection of the loan at the time it fell due, under those circumstances? [785]

A. Well, of course you would have to judge every instance by itself. But, as a rule, I should say that was true.

Q. What is the fact, from your experience and observation, as to whether that practice, that course of dealing by the banks, has resulted largely in the development of this country? A. It certainly has.

Q. What would you say in regard to the ability of the majority of the miners who have opened and developed and operated ground, to finance their operations in the first instance?

A. As a rule they have not been able to finance their operations. That has been the exception rather than the rule.

Q. Financing the operations of a miner, whether he was a layman or owner, results generally, or did it generally result in that miner bringing to the bank the gold-dust which he produced?

A. That was one of the considerations that entered into the reason for the bank advancing to the opera-



(Testimony of Luther C. Hess.)

tor, because one of the principal profits of the banks in this portion of the country is derived from the purchase and sale of gold-dust, and all of the banks have been striving as much as possible to get the greatest share of the gold-dust.

Q. That was the principal cause of this fierce competition that has been testified about.      A. Yes, sir.

Mr. HEILIG.—That is all.

Cross-examination.

(By Mr. RIDER).—Q. Mr. Hess. What is your business at this time?

A. I am engaged in mining, that is, I am the owner of mining property, and look after my interests in the property.

Q. Have you any banking interests at this time?  
[786]

A. Well, I have some stock in the First National Bank.

Q. And Mr. Wood, one of the defendants, is also an associate of yours in that bank?      A. Yes, sir.

Q. And Mr. McGinn, another defendant?

A. Yes, sir.

Q. In giving your opinion as to the worth of the securities and also as to the worth of the notes, to which Mr. McGinn called your attention, that opinion was based upon the assumption that the bank had a legal demand against the borrower in the amount named by him?      A. Why, certainly.

Q. Do you know that, as to the note of W. Sam Clark, Lew B. Clark and J. A. Clark, the three notes

(Testimony of Luther C. Hess.)

to which your attention was called, there was usury in them?

A. I do not. I know nothing with reference to them.

Q. Those notes should be depreciated in your estimation to the amount of the usury which was contained in them? A. As a rule, I should say not.

Q. You are passing your opinion now that usury is a legal demand?

A. No, not necessarily a legal demand.

Q. You know as a matter of fact those notes were depreciated when they were finally collected because of the fact that they contained usury, do you not?

A. No.

Q. And the same as to the note of Mr. Heilig. Do you know that? A. No.

Mr. McGINN.—That is assuming something not in evidence.

The COURT.—The questions have been answered. He may be cross-examined as to what he based his opinion on. [787]

Mr. RIDER.—Q. You stated that the security which Mr. McGinn read to you for the D. W. Truitt loan, being a three-quarters interest in a mining claim on Dome Creek, in your opinion and judgment was worth, in April, 1910, \$1,000?

A. Yes, sir.

Q. That is what the three-quarters' interest was worth, in your judgment?

A. Yes. It would be worth that.

Q. Would you consider, then, that it was security for \$1,000?

(Testimony of Luther C. Hess.)

A. Well, it would always be better, of course, to have some margin in a security.

Q. Do you consider that a bank is safe in loaning \$1,000 on a thousand dollars' worth of property?

A. It may be safe in loaning it.

Q. Save from the security standpoint?

A. No, I wouldn't say it would be perfectly safe.

Q. You would not consider that a thousand dollars' worth of property, as a banker, was sufficient security for a loan of \$1,000, would you?

A. No. You would expect to make some profit out of your loan.

Q. What per cent of the value of the security do the banks usually loan?

A. Well, that is pretty hard to say, because the personal element comes into it.

Q. But as to the security, what per cent of the security do you usually loan?

A. Oh, I don't suppose a man would want to loan more than three-quarters.

Q. Do you know D. W. Truitt owned a three-quarters interest in that property?

A. I do not. [788]

Q. Do you know the bank had security on a three-quarter interest?     A. I do not.

Q. You don't know that the bank only had security on a one-half interest?

A. I don't know anything about the amount of the security.

Q. You stated that the Royal Hotel property in your judgment in April, 1910, was worth \$4,000?

(Testimony of Luther C. Hess.)

A. Yes, sir.

Q. Do you know the amount of the indebtedness that the bank held against the security of that Royal Hotel? A. No, not unless it was read here.

Q. It was not. The books of the bank show there was a claim of \$3,900 and some odd dollars for which this Royal Hotel stood. Would you consider it, when it was worth \$4,000, ample security for claim?

A. It couldn't be considered ample security, no.

Q. Would you consider it security for that claim?

A. It would be security for the major portion of it.

Q. You stated that three-quarters of the value would be all you would consider on a loan?

A. If I were making a loan.

Q. Three-quarters of the value.

A. If I was making a loan, and the element of security was the only thing to be taken into consideration, I certainly would not want to loan up what I considered the full value of the property,—not more than three-quarters.

Q. You stated the Royal Hotel property you believed was worth \$4,000 at the present time?

A. No, I don't believe I did.

Q. Did you intend to express any opinion as to its present value? [789]

A. No, sir. I think I said I doubted it was worth that much at the present time, if you will read my answer.

Q. Regarding the practice of loaning money for the development of mining property, to which Mr.

(Testimony of Luther C. Hess.)

Heilig called your attention, you say that a mortgage would be taken upon the prospect, that is, upon the mining claim that was to be developed, and upon the machinery of the man.

A. That is in some instances.

Q. Where he had machinery?

A. It would depend a good deal upon the individual, and upon the knowledge the bank had of his reputation.

Q. We are considering loans from the standpoint of security?     A. Yes.

Q. And, if you take security, your security would be the lease that the man had on the claim, and the machinery that he had out there?     A. Yes, sir.

Q. Or as much of that as you could get. Now, you stated that if by any chance the loan fell due without a realization on the part of the miner on his claim, you didn't then consider it good practice to close in on him and put him out of business?

A. I said you would have to judge each case upon circumstances, by itself; but that would be the rule.

Q. The machinery that he is using out there is deteriorating constantly?

A. It will be deteriorating some.

Q. It depreciates every year?     A. Yes, sure.

Q. They wear out a good deal of it?

A. That is usually replaced.

Q. And if he doesn't strike something by the end of the first year, he has got a play there next year entirely on credit, has he not? [790]

A. If he strikes nothing, yes.

(Testimony of Luther C. Hess.)

Q. If his development doesn't realize something by the end of the first year, you think then as a banker that it was more desirable that he be permitted to go on then with the development than it would be to collect the loan?     A. Yes, sir.

Q. You do?

A. Yes, sir. That is the way, as a rule. There might be instances that *that* wouldn't be true. If you were amply secured on your loan, it would be the proper thing to do, because you would not want to work a hardship upon the man. If your security had depreciated even below your loan, it might be best, if he had the chance to pay up the next year, to take the chance to lose a little more, to get his product from the claim.

Q. You think it better to take the chance that possibly you may lose what you were in it, and a little more, rather than to get your money?

A. I said, part of what you had.

Q. You said you might lose a little more?

A. I said, if your security had depreciated, it might be advantageous to take the chance of having it depreciate a little more, and lose a little more than you would by foreclosing.

Q. Because your suit to foreclose might be detrimental to the country?

A. Detrimental to the country and also to the bank.

Q. Then the thing that would be in your mind as a banker would be the interest of the country rather than the security which you held, which would cause a continuance of the loan?



(Testimony of Luther C. Hess.)

A. Not only the interest of the country, but the interest of the bank as well. [791]

Q. But you would be extending the loan because you would not want to bring on a ruinous condition, and not because you had ample security?

A. Certainly that would be the reason for extending it; would be the hope that you would realize more than by foreclosing.

Q. And the further hope that if he did eventually strike something, he would bring his gold-dust to the bank, and you would make some money out of that?

A. Yes.

Q. Those are the chances you would loan your money on? A. You may call it chances.

Mr. RIDER.—That is all.

Mr. McGINN.—That is all.

[Testimony of H. B. Parkin, for Defendants.]

H. B. PARKIN, a witness for defendants, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. McGINN.)

Q. What is your name? A. H. B. Parkin.

Q. Where do you reside? A. Fairbanks.

Q. How long have you resided in Fairbanks?

A. Since 1905.

Q. What is your business?

A. I am at present manager of Waechter Brothers.

Q. You were formerly manager of the Pacific Cold Storage Co.?

A. I am also still manager for the Pacific Cold Storage Co.

(Testimony of H. B. Parkin.)

Q. You are acquainted with the Fairbanks Banking Company?     A. Yes, sir.

Q. Did you subscribe for any stock on the Fairbanks Banking Company?     A. Yes, sir. [792]

Q. When was that?

A. That was when the bank was reorganized.

Q. February, 1908?     A. Around that time.

Q. How long did you own that stock?

A. I sold it in 1909.

Q. To whom did you sell it?

A. To Mr. Dusenbury.

Q. What part of 1909?     A. May 29th.

Q. How much did he pay you for it?

(Plaintiff objects as irrelevant, incompetent and immaterial. Sustained.)

Mr. McGINN.—I offer to show that it was for the sum of \$1,000.

Q. Since that time have you had any connection with the Fairbanks Banking Company?

A. No, sir, nothing further than doing banking business with them.

Q. Do you know D. H. Berger?

A. I don't know.

Q. Do you know Charles W. Kellogg?

A. Yes, sir.

Q. Are you acquainted with the property known as Number 1 above, first tier, left limit, Engineer Creek?     A. Yes, sir.

Q. You own an interest in that property?

A. Yes, sir.

Q. How long have you owned an interest in that

(Testimony of H. B. Parkin.)

property?     A. I bought the interest in 1907.

Q. Were you acquainted with the value of that property along about the month of April, 1910?

A. In 1910, the—(Interrupted.)

Mr. RIDER.—Wasn't that marked as sufficient to protect the loan?

Mr. McGINN.—No, it is not so marked on the list.

[793]

Q. Were you acquainted with its value?

A. Yes.

Q. What would you say an undivided one-half interest in that claim was worth about the month of April, 1910?

A. Probably in the neighborhood of \$1,000.

Mr. McGINN.—You may cross-examine.

Cross-examination.

(By Mr. RIDER.)

Q. You think that the value of a half-interest in that claim was worth \$1,000 at that time?

A. I should judge so.

Q. That is for the whole half-interest.

A. For a half-interest, yes.

Mr. RIDER.—That is all.

[**Testimony of John A. Clark, for Defendants.**]

JOHN A. CLARK, a defendant, called as a witness for defendants after being duly sworn, testified as follows:

Direct Examination.

(Mr. McGINN.)

Q. What is your name?     A. John A. Clark.

Q. What is your business?     A. Attorney at law.

(Testimony of John A. Clark.)

Q. How long have you been practicing law?

A. Since 1899.

Q. How long have you been engaged in the practice of law at Fairbanks?     A. Since April, 1906.

Q. Under what style?

A. Under the firm name of McGowan & Clark.  
[794]

Q. McGowan & Clark were stockholders in the Fairbanks Banking Company?     A. We were.

Q. And you became a director of the Fairbanks Banking Company when?

A. I believe I was elected at the regular meeting upon the 12th of May, 1910. The first meeting I attended was the regular meeting in July, 1910.

Q. Prior to that time, Mr. Clark, had you had any experience in banking?     A. Absolutely none.

Q. Were you a bookkeeper?     A. No.

Q. At the meeting of October 12, 1910, I will ask you whether there was a statement presented to the directors as to the condition of the bank on that day?

A. My recollection is that there was, and I think a copy is filed in the minutes—filed with the minutes of that day.

Q. I will ask you to state whether or not at that time you believed that the Fairbanks Banking Company was in good shape?     A. I certainly did.

Q. And solvent?

A. I certainly considered it solvent at that time.

Q. State whether or not you believed that its assets exceeded its liabilities, and included in its liabilities its capital stock.     A. I did.

(Testimony of John A. Clark.)

Q. I will ask you to refer to this statement of the condition of the Washington-Alaska Bank, of October 11th—the bank had then changed its name?

A. Yes. The name was changed approximately the 1st of October. I think the actual amendment was not received in Alaska [795] until about the 6th or 8th, but the name here was changed on the 1st of October, 1910.

Q. The condition of the Washington-Alaska Bank of October 11, 1910. State what that shows as to what the interest, exchange and undivided profits were at that time.

A. It shows here \$51,576.29.

Q. From that statement, as a director what were you led to believe?

A. I believed that that was the undivided profits and the interest and exchange.

Q. I think it also says that that was in connection with some gold shipment.

A. I think I understood it was in connection with profits that were anticipated on gold shipments, or something of that kind.

Q. Did you believe at that time that these were the profits over the liabilities? A. Yes, sir.

Q. Of the bank? A. I certainly did.

Q. Now, there is an item here; expense and savings interest, \$61,401.59. What about that item?

A. I didn't know until last week that the undivided profits should be subtracted from that.

Q. When did you first learn that?

A. One day last week during the trial. Mr. Stew-

(Testimony of John A. Clark.)

art explained that to me I think.

Q. McGowan & Clark became the attorneys for the Washington-Alaska Bank and the Fairbanks Banking Company?     A. Yes, in May, 1910.

Q. And what did you receive from the bank as a part of your retainer?

A. A thousand dollars' worth of capital stock, and the rent [796] of the offices, amounting to \$2,500. It is figured \$2,500 for the year. And, in our letter of acceptance of the offer, which is on file and you can refer to it, I said I would take the office rent, which amounted to about \$1,500 a year, and \$1,000 worth of stock.

Q. State whether or not you regarded that stock of that value at that time.

A. I certainly did. I knew a dividend had been paid a short time before. I thought the stock was worth it.

Q. Now, Mr. Clark, without going too much into detail, I wish you would explain about this account of York to the Court, so that we will understand it.

A. I think it was in 1909—1908 or 9—at the time Judge Lyons was here, we secured a judgment against York requiring him to indorse those drafts which we had—the treasurer's warrants rather, which we had in our safe—to indorse them over to the Fairbanks Banking Company, or, in the event that he refused so to do, then the clerk of the court was to make his indorsement. We had a special officer appointed, who went into the Chandlar country where York was at that time, and he presented



(Testimony of John A. Clark.)

the drafts to York, with presumably a certified copy of the judgment, and requested him to indorse them, and he refused to do it. We then had the clerk indorse them, sent them on to Washington, and, after considerable negotiations with our correspondent there, we secured the amount of the treasury warrants. Then I believe it was before we had received the proceeds of that collection, when we knew or had reason to believe that the warrants would be paid upon the clerk's indorsement, we went to the then receivers of the bank, Messrs. Hawkins and Mack—this is my recollection—and asked them to make up a list of the York claims in the bank that should be paid from [797] these treasury warrants, as I had always known that certain claims held by the bank were to be settled from the proceeds of those warrants. They, the then receivers, prepared—wrote us a letter—I think it was introduced here in evidence the other day—setting forth the claims that they held that should be paid from those treasury warrants. When the money came, we figured out the expenses of collecting, and the amount of their claims, and it amounted to a dividend of, I think—my recollection is 89-1/2 per cent of the total amount of the claims. We accordingly presented to the receivers our check for 89-1/2 per cent of the claims that they had given us a list of, and we got a receipt for it which has also been introduced in evidence, and turned the balance of the money over to Captain Barnette, we having received a written order from Captain Barnette, indorsed on the bottom of the re-

(Testimony of John A. Clark.)

ceiver's letter, telling us to pay those claims pro rata.

Q. If the receivers had included in this list all of the claims against York at that time, including this Timmerman note, you would have paid the percentage just the same?

A. The percentage might have been a trifle less, but nevertheless it would have been paid, because our understanding and instructions were to pay the claims that the receiver presented so far as we possibly could.

Q. You say that judgment was obtained in 1909.

A. It was obtained the year Judge Lyons was sitting here. I think it was obtained the last days he held court, I think about the 3d of July, and I think it was 1909. It took all the time until 1911 to finally get the matter adjusted. The old treasury warrants became worthless by reason of lapse of time. Then there were some proceedings to renew [798] those warrants, and then the warrants were renewed, and, after considerable negotiations we collected the money.

Q. I believe you collected this insurance of Barrett.

A. We didn't collect it, but our correspondents. We had the collection of it from this end, but all the litigation was carried on by our correspondents in San Francisco and other places against the various insurance companies. Our attorneys were Knight & McCarty in San Francisco, and I think there were a couple of suits in Phoenix, Arizona, one or two suits

(Testimony of John A. Clark.)

in Johnstown, Pennsylvania, and I believe there were some other suits—I think one or two other suits in different places.

Q. What was the amount of those insurance policies?

A. The original amount of those insurance policies, less two French companies that were in dispute, they claiming that they had not received the premiums, the original amount, as I remember, was sixteen thousand four hundred and something, of six hundred and something. Then there were two French companies—I think each of those policies were either \$2,500 or \$5,000, and they disclaimed liability, saying they had not received their premiums that were due at the time the policy was taken out. That would have increased it, but there was a question about that. It amounted to about \$16,000 and some dollars.

Q. When was that matter finally adjusted, if you know?

A. I think it was in 1910 sometime that we made our final settlement with the bank.

Q. In the summer of 1910?

A. I don't remember what time it was. I think the books of the bank would show when we made our final report to the [799] bank and settled up our account with them. I think it was sometime in the spring or summer of 1910.

Q. Do you know when John Healey was elected a director?

A. John Healey was elected a director at the first

(Testimony of John A. Clark.)

meeting that I attended. That was in June.

Q. Wasn't he elected in September?

A. No. Preston was elected in September. But John Healey—I think it shows on the minutes of June 12, 1910, that he was elected at that meeting.

Q. And George Preston was elected when?

A. George Preston was elected at the stockholders meeting held on the 12th or 13th of September, 1910.

Q. Do you know whether he qualified at that time?

A. I don't remember whether he qualified then or not.

Q. What was the amount of your bank balance in the Washington-Alaska Bank in October, 1910?

Mr. RIDER.—We object as irrelevant and immaterial.

The COURT.—What is the purpose?

Mr. MCGINN.—To show that he believed the bank was solvent.

The COURT.—He may answer the question.

A. The first of the month I think our balance was something like between twelve and fourteen hundred dollars, and during that month, as I recollect, I deposited in the neighborhood of—well, at the end of the month I think our balance was about twenty-six or twenty-seven hundred dollars.

Q. That was in 1910. A. In 1910.

Mr. MCGINN.—You may cross-examine.

Cross-examination.

(By Mr. RIDER.)

Q. Mr. CLARK.—Did you know what stocks the

(Testimony of John A. Clark.)

Fairbanks Banking Company, or the Washington-Alaska Bank as it was then known, [800] carried during the time that you were a director of that bank?     A. Yes. I think I did.

Q. What stocks did it carry?

A. Gold Bar, and I think \$1,000 in the Chena Milling & Refining Company.

Q. What else?

A. I believe you charge that they carried \$75,000 premium Washington-Alaska Bank stock.

Q. They did?

A. I think that is the entry in the books.

Q. You knew there was not any such thing as that in existence?

A. No, I don't know as I would say that; that there was no such thing in existence.

Q. Did you ever search for that premium of the Washington-Alaska Bank and try to find it during the time that you were a director?

A. I wouldn't know where to look.

Q. You knew the Washington-Alaska Bank had gone out of existence?

A. I knew it was merged with the other bank.

Q. It no longer had any existence.     A. No.

Q. And you thought its stock under those conditions could have been sold for a premium of \$75,000?

A. I think that is a matter of bookkeeping entries. I don't know what else they would do with it.

Q. Even though the bank had gone out of existence, they could still carry that as an asset.

A. You will have to ask a bookkeeper about that.

(Testimony of John A. Clark.)

I have heard bookkeepers discuss that here and at Valdez, as to what should be done with that item.

[801]

Q. They couldn't find what to do with it.

A. No.

Q. It had no actual existence?

A. I don't know whether it existed or not.

Q. Did it ever occur to you to charge it to profit and loss?      A. I wasn't sure.

Q. In the discussion of the matter with the directors in regard to getting it off the books?

A. I have heard that urged, and I have heard others say that the proper thing to do was to carry it as it was.

Q. When you stated that you believed that the Washington-Alaska Bank was solvent during this period of time, that belief was expressed in reference to the fact that \$75,000 of stock of the Washington-Alaska Bank had some existence and some value. Is that it?

A. I wouldn't say that. I was considering from the statements that were presented showing that there was undivided surplus or interest earnings and undivided profits.

Q. Doesn't that statement show that you are carrying the Washington-Alaska Bank—the statement of October 12th, to which your attention was called — (Interrupted.)

A. I don't remember whether it does or not, I presume it does.

Q. It shows stocks \$417,949?



(Testimony of John A. Clark.)

A. If you say so. Yes, I will take your word for it.

Q. All the stocks that you had were the Gold Bar and the Washington-Alaska Bank and the Chena Smelting, Milling & Refining Company which was \$1,000. A. Yes, sir.

Q. And Gold Bar was carried on the books at \$341,949. A. Yes.

Q. And the balance of it would have to be this Washington-Alaska Bank stock for \$75,000.

A. I presume it would. [802]

Q. Then, when you say that you believed that the Washington-Alaska Bank was solvent during that period of time, you must be considering this \$75,000 as an asset, are you not?

A. Well, as I look at it now, I would say this; that that would have to be considered as an asset in order to reach those figures.

Q. What became of that Chena Melting works stock? A. The stock, or the property itself?

Q. The stock? A. I don't know.

Q. Did you ever see it? A. No. I never saw it.

Q. Did you ever see it around the bank during the time you were a director? A. No.

Q. You have never seen it since, have you?

A. No.

Q. As a director, didn't you ever attempt to find these stocks that you read on that statement?

A. I knew that the Dexter-Horton stock was outside.

Q. What Dexter-Horton stock?

(Testimony of John A. Clark.)

A. The Gold Bar stock in the Dexter-Horton.

Q. Pledged to the Dexter-Horton?

A. I don't know that it was pledged. I don't think it was.

Q. It was in their custody.

A. I understood it was in the safe deposit box.

Q. Did you ever try to find the other stock?

A. The only other one was the stock of the Chena Smelting, Milling & Refining Company.

Q. Did you ever try to find that?

A. No. The officers said they had that stock, and we didn't go and look for it.

Q. You were appointed one of a committee to examine into the loans of that bank. [803]

A. Yes. That was at the meeting of October, 1910.

Q. Did you ever make an examination?

A. Yes, we did.

Q. Into the loans? A. We did.

Q. Did you ever make a report?

A. I will explain what we did.

Q. Answer me. Did you ever make a report?

A. I don't know whether a report was made or not.

Q. You were a member of the committee?

A. I was.

Q. Was a report ever prepared?

A. It was prepared, I know, by Hawkins and Jackson.

Q. Do you know what became of it?

A. I have not the slightest idea what became of it.

Q. You know it was never presented to the board

(Testimony of John A. Clark.)

of directors?     A. I don't know.

Q. Did you find your loans in a very satisfactory condition at that time?

A. Some of them were not.

Q. About how many were not?

A. I don't know. What we did was this: We went through those loans at night. We were all busy in the daytime, and we took several nights a week during the course of that month and we went through the loans, took each loan and went and hunted up the securities and looked it up, and made out a list at that time of what we considered gild edge, that is, could be realized on practically on a few days' notice; then others that were slow, but good; and then there was another list prepared that were doubtful. That was the order in which we classified the loans.

Q. Do you remember how many of those slow and doubtful ones there were? [804]

A. I haven't any idea, because Hawkins and Jackson had the list in their possession.

Q. Do you remember how many of these perfectly good loans that are referred to here were in that list?

A. I don't remember.

Q. Did you, as attorney for the bank, ever attempt to collect any of those perfectly good loans?

A. I don't know.

Q. Especially those that are past due?

A. The record will show.

Q. Don't you know whether you did or not?

A. I know we brought some suits. I don't know whether that is the Perrault case or not—I know we

(Testimony of John A. Clark.)

brought some suits at that time.

Q. Several suits brought that fall?

A. I know there were several suits where we had the attorney for the receiver substituted as attorney for the plaintiff after the bank had closed.

Q. In the matter of this York transaction, these warrants to which you refer were held by your firm as security for a claim of the bank against York, and also a claim of Barnette against York, were they not?

A. Yes.

Q. What was the amount of Barnette's claim against York?

A. Well, I can't give you the figures, but the 89-1/10 per cent amounts to \$1,900 and some dollars. I don't know the figures, but I know the amount we turned over to him. If I may look at my papers, I can figure out and tell you the exact amount we turned over to him, and we can then figure it out.

Q. See if I can't refresh your recollection on it. Barnette took \$2,000 out of it as his part of the collection? [805]

A. No. He took \$1,900. I have his receipt on file in my papers.

Q. Get them and see how much was turned over to Barnette on that.

A. All right. (Examines papers.)

Q. How much was turned over to Barnette?

A. \$1,950.

Q. As his part of the settlement. A. Yes.

Q. How much was turned over to the receivers?

A. I don't remember the number of the exhibit, but

(Testimony of John A. Clark.)

there is an exhibit here that shows the exact amount.

Q. Here is a copy of it, and that will probably give you the information.

A. (Examining paper.) Yes, I guess that is it; \$692.45.

Q. \$692.45 was turned over to the receivers?

A. Yes, \$692.45.

Q. And nineteen hundred and something to Barnette. A. Yes, \$1,950.

Q. Now, you say that the amount turned over to the receiver was I believe you said 89-1/10 per cent?

A. Yes.

Q. That letter shows 87-1/10 per cent.

A. Well, 87-1/10 per cent.

Q. There was enough in your hands to have liquidated that York claim, if Barnette had not been given that \$1,950? A. Easily.

Q. You figured that amount that was coming to the receiver as his proportion of the claim, based upon the face value of the notes, didn't you?

A. Based upon what the receivers told us was their claim, as shown by their letter to us.

Q. You knew, as a previous director of the bank, that this [806] York claim existed in the bank, did you not?

A. Yes, I certainly must have. Well, wait a moment. No, I don't know. Yes, I must have known that those York notes were there. I don't know as I knew about the Timmerman.

Q. You knew what the amount of the York notes was, did you not?

(Testimony of John A. Clark.)

A. I had forgotten. I didn't know until the receivers wrote us the letter.

Q. Did you ask the receivers to present the York notes to you?

A. Yes. No, not to present the notes.

Q. Just to make a statement of the amount.

A. To tell us the amount of their claim.

Q. The intention was to get the amount of the face of the York notes?

A. No, to get the amount of their claim.

Q. The amount of the face, wasn't it? You made your settlement upon the amount of the face of the York notes.

A. Yes, because we knew there was not enough for anybody to get interest on their claims.

Q. There was \$1,900 coming to Barnette?

A. Yes, and his claim was considerable more than that.

Q. Whose claim? A. Barnette's claim.

Q. You were going to see that Barnette got his \$1,900 whether the bank got anything or not.

A. No. They all got paid pro rata without figuring any interest on any claim. There was not enough to pay the principal of the various claims of the different parties.

Q. Haven't you stated previously that the bank had a lien on these warrants to the amount of their claim?

A. I don't know whether they had a lien. [807]

Q. Were they not pledged with you for the purpose of securing the bank's claim?



(Testimony of John A. Clark.)

A. They were turned over to us by Mr. McGinn who originally instituted this suit, as I remember it, and we held those warrants in our safe. I don't know—you might call it a pledge to secure the claims of the bank, but it was also a pledge to secure the other claims.

Q. Did you not testify respecting these York notes at Valdez?     A. I did.

Q. Did you not testify in this manner (reads):

“We knew all the time that the bank held certain notes. We went to the receivers and got a statement of the notes they held against York. When the money came, after settling with Cleary, the attorney at Washington, and paying our own claim for services rendered, there was something like—as I remember it—I won't be exactly certain—something like 86 per cent of the face of the notes belonging to Barnette and the face of the notes held by the bank, which amount was then paid into the present receiver's hands, and we took his receipt for it, and Barnette's proposition we paid over to him, and that closed the proposition.”

A. That is true.

Q. Then that whole settlement was made on the face of the notes.

A. Yes, because there was not enough to pay principal and interest both.

Q. You have said the receivers didn't make any claim against you for the amount of the interest.

A. They didn't.

Q. Your whole settlement was made irrespective of whether there was enough to pay the interest.

(Testimony of John A. Clark.)

A. Yes, sir. [808]

Mr. RIDER.—That is all.

Mr. McGINN.—I desire to offer and introduce in evidence a portion of the minutes of October 12, 1910, for the purpose of showing the directors present at that time (reads):

“D. H. Jonas, J. A. Clark, J. A. Healey, and J. A. Jackson; George Preston not being present.”

**[Testimony of John L. McGinn, for Defendants.]**

JOHN L. MCGINN, a defendant, witness for defendants, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. HEILIG.)

Q. What is your name? A. John L. McGinn.

Q. And your profession? A. Attorney at law.

Q. How long have you practiced your profession?

A. Since 1893.

Q. Where?

A. In Portland, Oregon, and Alaska.

Q. What parts of Alaska?

A. Nome and Fairbanks.

Q. When did you arrive in Fairbanks?

A. March, 1905.

Q. Are you acquainted with E. T. Barnette?

A. Yes.

Q. Were you acquainted with him prior to your coming to Fairbanks? A. No, sir.

Q. Soon after arriving here, you became his attorney?

A. Yes, sir, attorney for E. T. Barnette, also at-

(Testimony of John L. McGinn.)

torney for the Fairbanks Banking Company, then a partnership.

Q. At the time that you arrived here, the Fairbanks Banking [809] Company was a going concern? A. Yes, sir.

Q. You became intimately acquainted with all its business affairs?

A. Well, I was attorney for them, and in that capacity became acquainted with their affairs, that is, I was consulted as legal adviser for them and got such information as an attorney usually gets hold of. I was principally engaged in trying lawsuits during 1905. I stayed here until September of 1907, and then went out, and returned again I think the following March.

Q. Were you in Fairbanks at the time the partnership bank suspended? A. Yes, sir.

Q. Can you state from your knowledge of the affairs at that time, what caused the suspension?

A. It was the flurry in financial conditions all over the United States at that time.

Q. I will ask you specifically whether it was occasioned by any severe losses sustained by the Fairbanks Banking Company, or merely a lack of currency?

Mr. RIDER.—Objected to as incompetent and calling for a conclusion of the witness.

The COURT.—Objection sustained.

Mr. HEILIG.—Q. At the time of the suspension of the bank, I will ask you to state what steps Mr. Barnette took as president of the bank to communi-

(Testimony of John L. McGinn.)

cate with *a* assure the depositors of the bank with reference to their moneys on deposit in the bank.

A. Why, they circulated, over Barnette's signature, a written statement in which he set forth a statement of the condition of the bank, as I remember correctly giving his assurance to the depositors that everything was in [810] good shape, and that he would put his private fortune back of the bank.

Q. Do you remember whether there was any advertisement to that effect in the newspapers at that time?

A. Yes, sir. And he also— Yes, I am pretty sure it was published in the newspapers. And they also had circulars setting this forth. He also called for a meeting of the depositors, to be held so the affairs of the bank could be gone through.

Q. Where and when was that meeting of the depositors held?

A. That meeting was held in this courtroom. I don't think it was this same courthouse.

Q. That was before the fire, was it?

A. On the 12th of December, 1907.

Q. State regarding the attendance of depositors at that meeting.

A. There was a large crowd of depositors present here, and the matter was discussed, and the matter of the bank going upon a scrip basis was at that time discussed, and I think that you got up and addressed the meeting in regard to the Fairbanks Banking Company going upon a scrip basis.

Q. I call your attention to the fact that I appeared

(Testimony of John L. McGinn.)

at the second meeting. Tell what transpired at the first meeting.

A. I can't segregate these meetings. I know there was a committee appointed of five, to go through the affairs, at the first meeting, to go through the affairs of the bank and make a careful examination, and report back to the depositors.

Q. Did that committee make a report?

A. Yes, sir.

Q. Is that report in evidence here?

A. Yes, sir. [811]

Q. I would ask you, for the purpose of illustration, is this the printed report signed by W. G. Cassels and others?

A. That is not the printed report. This was a typewritten report. Afterwards, upon the 22d day of December, this committee's report was gotten out and addressed by the committee to individual depositors, and sent to them through the mail.

Q. I will ask you whether the typewritten report is in evidence? A. It is.

Q. And based upon that, a circular was published and caused to be circulated by this committee?

A. Yes, sir.

Q. Subsequent to that, this second meeting of the depositors was held to pass upon the recommendations of that committee? A. Yes.

Q. Do you remember about when that was?

A. My recollection is that it was about—I think it was the 16th of December, 1907.

Q. That committee recommended liquidation of

(Testimony of John L. McGinn.)

the bank, and the appointment of a receiver for that purpose?     A. Yes.

Q. Will you state to the court why that recommendation was not carried out?

A. Well, that was the meeting where you got up and addressed them, and suggested to them that the other banks were going upon a scrip basis, and this bank could do the same thing. And the depositors thought that that was the proper thing to do.

Q. How did the depositors indicate their acceptance of that suggestion?

A. There was a rising vote, if I remember.

Q. Was there any dissenting vote?

A. No, sir. [812]

Q. Isn't it a fact that this courtroom was crowded, standing, to the doors?     A. Yes, sir.

Q. And that the meeting was confined exclusively to depositors?     A. Yes, sir.

Q. What followed after the vote of the depositors that the bank should not liquidate, but resume on a scrip basis?

A. Then the bank started, opened up in pursuance of that, on the 23d day of December, 1907.

Q. How soon after that, and from whom did the suggestion come, to organize a corporation to take over the affairs of this partnership?

A. Well, it came from—I don't know just where it originated, but it came from—it was talked about amongst the merchants here, and amongst the miners, and attorneys, professional men, and they thought it would be a good idea to organize a corporation,



(Testimony of John L. McGinn.)

and it was talked of by Barnette, to organize a corporation to take over the Fairbanks Banking Company, that is, to organize what they considered a miners and merchant's bank, get the men who were the large operators on the creeks interested, and also the merchants in the town.

Q. In pursuance of that talk, what was the next definite steps taken toward that?

A. The next step was that either upon the 3d or 4th day of January, there was a meeting held in my office of these proposed incorporators.

Q. About how many were present?

A. Well, I can't recall just at this time. There was quite a crowd there. I know. My office was pretty well filled up.

Q. What was the fact in regard to the persons there being large depositors in the bank at that time?

A. They were large depositors. There was Dave Yarnell, and [813] Dan Ryan, that I remember of particularly. I think Dan Ryan had something like \$25,000 in the bank when it suspended, and my recollection is that Dave Yarnell had something like \$35,000, but I wouldn't be so sure about that.

Q. Do you remember whether the Jessons had any considerable sum in there at that time?

A. I can't recollect.

Q. These persons numbered about how many?

A. The minutes say 19, and I suppose that is about right. It may have been that, or less, or more. I can't recollect. All I can depend upon in that connection, is what the minutes say.

(Testimony of John L. McGinn.)

Q. Was there a meeting organized so that a secretary was appointed?

A. Yes. My recollection is that there was a chairman appointed and a secretary. There don't seem to have been any minutes taken of that meeting, no minutes preserved. It was somewhat of an informal meeting, more so than anything else.

Q. What was done at that informal meeting?

A. There was a committee of three appointed at that time to go through the affairs of the Fairbanks Banking Company. That committee consisted of Claypool, Jesson and Jonas. Jesson had stated that he would subscribe for \$10,000 shares of stock, or \$10,000 worth of stock, and that he would subscribe so much more for each of his brothers, and also some for Mrs. Lee Jesson, and he was placed upon the committee I think upon his own request, stating that they were going to put that much money into the affair and he wanted to be a member of that committee and examine and investigate the affairs of the bank himself.

Q. This was which Jesson?      A. John A. Jesson.

Q. Mr. Claypool and Mr. Jonas had been upon the depositors' [814] committee and were familiar with the assets and liabilities of the partnership at that time.      A. Yes, sir.

Q. How soon after that committee was appointed, did it report to anybody?

A. That committee, the minutes show here, met at 10 o'clock I think it was upon the 5th day of January, and they reported back to a meeting held in the

(Testimony of John L. McGinn.)

office of McGinn and Sullivan at 8 o'clock upon the evening of the 6th of January, 1908.

Q. Of whom was that meeting composed?

A. Well, I think the same people who were present at the previous meeting.

Q. What report did that committee make to the meeting?

A. They reported at that time that the values placed upon the assets of the Fairbanks Banking Company by the depositors committee be accepted, and that the old partnership be allowed stock for the difference between the amount that the assets or the resources exceeded the liabilities.

Q. Is there a minute made of that report?

A. Yes. It is in evidence. Also they spoke about the accrued interest on existing loans as of the 12th day of December, 1907, up until February 15, 1908, being kept by the partnership; also the privilege of Mr. Hill and Mr. Wood, to either take stock or money; and, if they took money, the same was to be paid before the 1st of July.

Q. We have a minute of that meeting in evidence?

A. Yes, sir.

Q. What did the meeting do with the report of that committee?

A. They adopted it. I might state in this connection that that date, the 1st day of July, was fixed, if I remember correctly, for one reason that the bank was upon a scrip basis at that [815] time, and they didn't feel that they could pay the money very much before the 1st of July, and the other reason

(Testimony of John L. McGinn.)

was that Mr. Wood was in Seattle and it was not known whether he would return over the trail or come by steamboat, and if he came by steamboat he would not get here before the first of July, and it was to give him an opportunity to return here and exercise his option to either take stock or money.

Q. How did that option on Mr. Hill's and Mr. Wood's part to accept money or stock originate?

Mr. RIDER.—Let it be understood that I am objecting to any testimony being received respecting an oral option, for the reason that it is irrelevant and immaterial. It is the same objection I made to Wood and Hill when they were testifying.

The COURT.—The same ruling; received, subject to your objection.

A. I don't know just how that did originate. I know it was talked of in the meeting, and they were given that privilege. Just how it originated, I can't tell.

Mr. HEILIG.—Q. Was it at this meeting, at which the committee of three reported, that the list of proposed subscribers proposed stockholders was presented?

A. Yes, sir.

Q. You saw that list?

A. I saw the list, yes, sir.

Q. Can you state whether at that time Mr. Hill was requested to subscribe for stock for Mr. Wood?

A. I know that Mr. Hill refused to subscribe. Whether he was requested or not, I don't know.

Q. What did Mr. Hill say, if anything, at that time as a reason for his refusal?

(Testimony of John L. McGinn.)

A. I can't recall that. [816]

Q. Do you know who did subscribe Mr. Wood's name?

A. I can't recall that, except from the handwriting as I look at it now.

Q. At that meeting were you instructed to proceed with the incorporation, or had that been prior to that time?

A. I think that was the meeting at which a committee was appointed to take steps towards the incorporation of a company. The matter was left to them.

Q. What instructions did you receive from the committee relative to incorporation?

A. To proceed to incorporate under the laws of the State of Nevada, which I did.

Q. How did you proceed?

A. Why, I telegraphed to W. H. Metson to San Francisco. The telegram was introduced in evidence. I set forth as briefly as possible the terms under which we wanted to incorporate.

Q. At what time did you expect that corporation to be complete, or to receive the Charter, the Articles of Incorporation?

A. We expected that we would be able to have them back here and be able to start in business by the 15th day of February, 1908, organize and take over the affairs of the partnership.

Q. You drew up this transfer which was made by the partnership to the corporation which is in evidence here called exhibit "C."

(Testimony of John L. McGinn.)

A. Yes, sir, that is the one that is attached to the complaint.

Q. At whose instance did you draw it up?

A. At the instance of the executive committee of the Fairbanks Banking Company.

Q. Who brought you the memoranda which you drew that instrument from?

A. Mr. Dusenbury. [817]

Q. You had attended the meetings of the executive committee and understood the terms which they had arrived at with Mr. Barnette, Mr. Hill and Mr. Wood?

A. I had attended the meeting of the stockholders held on the 12th day of March, 1908, and also the meeting of the board of directors that was held upon that date when the executive committee was appointed. Then the executive committee, if I remember correctly, went through the affairs of the bank at that time; then afterwards Mr. Dusenbury brought up these papers to me.

Q. What papers did he bring up to you?

A. He brought me up the minutes of the meeting of January 5th, 1908, and also a list of the resources and liabilities of the bank, which set forth the stock and the loans and discounts. And it is practically embodied in the contract itself, that is, that assignment and transfer.

Q. Can you explain how you happened to omit the provision in regard to the old interest account?

A. I cannot.

Q. And the option to Hill and Wood?



(Testimony of John L. McGinn.)

A. It should have been there. I neglected to do it. I overlooked it. There was a good many items there. That was the understanding with the parties.

Q. When did the stockholders hold their first meeting?

A. The stockholders held their first meeting on the 12th of March, 1908.

Q. And of that meeting we have some minutes?

A. The minutes are in evidence, yes, sir.

Q. At which meeting did the stockholders elect the board of directors? A. At that meeting.

Q. When did this board of directors hold their first meeting? [818]

A. I think immediately after the adjournment of the stockholders meeting. In fact, I am quite sure of it.

Q. And elected their officers? A. Yes, sir.

Q. Who were employed by that committee to prepare by-laws?

A. McGinn & Sullivan, the attorneys for the bank.

Q. Did the question come up before the board prior to the drawing of those by-laws, with reference to the right and authority of the bank to purchase its own stock?

A. That was discussed, if I recollect right, at the first meeting—the first or second meeting—the second meeting of the stockholders, I think, the one held January 6th. The question arose as to people who were not satisfactory to the stockholders, getting stock and becoming stockholders in the bank, and they didn't want to have anybody as a stockholder

(Testimony of John L. McGinn.)

that might be obnoxious to the other stockholders, or persons whom they thought might be detrimental to the interests of the bank, and particularly they didn't want to have any of the stock get into the hands of any of the persons connected with the other two banks here, the Washington-Alaska Bank or the First National Bank, because they thought they might use it as a means of inquiring into their business.

Q. So you were consulted with reference to that power?

A. I was consulted with reference to it, and I examined the question at that time and came to the conclusion that the corporation had a right to buy in their stock, and I so [819] advised them. And, when I prepared the by-laws, I inserted that provision in the by-laws.

Q. Did you at any time advise the directors to the contrary? A. No, sir.

Mr. RIDER.—You said “that provision.” Do you mean the one you read here yesterday?

A. Yes, sir.

Mr. HEILIG.—Q. I will ask you to state whether you gave that advice and prepared by-laws in correspondence with it, after consultation of what authorities you had at that time.

A. Yes, I looked the matter up.

Q. You were well provided with law books in your office at that time?

A. Yes, sir. I had Frost on Corporations. Then I looked back where they have the statutes where

(Testimony of John L. McGinn.)

it is prohibited—those States where it is prohibited that they shall buy any stock, and there was no law on that subject, no prohibition against it in the law of Nevada, according to Frost. I still have that work.

Q. You state that at the time you drew up that transfer and contract, exhibit “C,” which was signed by Barnette and Mr. Hill while Mr. Wood was outside, that you omitted a provision in regard to Mr. Wood’s option and Mr. Hill’s option to take money instead of stock for the difference between the assets and liabilities of the partnership. A. Yes, sir.

Q. What, if anything, was done with reference to that prior to Mr. Wood’s return?

A. There was nothing done about it.

Q. When Mr. Wood returned, will you state how the matter came up, if at all, and what assurances were given to Mr. Wood. [820]

A. These papers were signed upon the 16th day of March. I think Mr. Wood got in here some time in the middle of April, and, of course, they wanted his signature to this transfer. On the 16th of March, Mr. Wood read it over and stated that he would not sign it because there was a clause in there stating that he had subscribed to stock, and he didn’t intend to subscribe for any stock; that he wanted his money, as he was going to sever his connection with the bank. And I have forgotten just now, but my recollection is that that was at a meeting of the executive committee, but I am not sure about it, or whether it was just an informal meeting that we held

(Testimony of John L. McGinn.)

there at that time. I know that Hill and Barnette, and I think Jonas—well, I can't recollect just at present—they talked the matter over, and they said, "Here, Dick. You are perfectly protected." And they showed him the minutes of the meeting of the directors of the 12th, where the privilege was given to him. And the matter then was thoroughly understood that by signing that agreement he would not waive any right that he had to demand his money before the 1st of July.

Q. You were Mr. Wood's attorney at that time?

A. Well, I was acting for the bank at that time.

Q. For the partners. You were practically acting for all of them.

A. They were not a partnership then. The partnership had been dissolved. This was in April.

Q. Prior to that you had been Mr. Wood's attorney?

A. Yes. That is, I was attorney for the partnership. I was never attorney for Mr. Wood like I was for Captain Barnette. I don't know that Mr. Wood had any attorney outside of the attorney for the partnership. That is, I didn't transact any personal business for Mr. Wood. [821]

Q. You heard these assurances made to Mr. Wood?

A. Yes, sir.

Q. They were made in your presence by the members of the executive committee?

A. Yes. And the matter was thoroughly understood at that time that he had that right.

Q. Did you or did you not at that time advise

(Testimony of John L. McGinn.)

Wood to the contrary?

A. No, sir. There was no question about it. It was so thoroughly understood.

Q. Did you join in those assurances to Mr. Wood that if he signed this transfer and agreement he would not be bound by that clause in the agreement, to take the stock?

A. Yes, sir. I thought the whole thing was a matter of record; that one was a part of the other.

Mr. HEILIG.—Q. When did you first become a director of this corporation, do you remember?

A. I was elected at a meeting of the stockholders held upon the 13th day of September, 1909, but I didn't qualify that night. I think I qualified the succeeding day, and attended a meeting upon the 14th day of September, 1909. That was the first meeting that I attended as a director up until the 1st of May, about the time that Mr. Wood and I purchased the stock of the First National Bank.

Q. You say the 13th was the first meeting that you attended.

A. No. On the 14th; there was a stockholders' meeting on the 13th, where I was elected a director. I wasn't present at the stockholders' meeting that night, but I was elected a director; I didn't know anything about it until the next day. Then I attended a special meeting, or an adjourned meeting, on the 14th. [822]

Q. At the meeting of November 12, 1909, state whether or not you had a report of the manager of the Gold Bar Lumber Company showing the con-

(Testimony of John L. McGinn.)

dition of its affairs on October 1, 1909.

A. I can't recollect now whether we had at that time or not. We always got the annual report for the fiscal year ending September 30, but whether we had it for the year ending September 30, 1909, on November 12th or not I can't say.

Q. Do you remember any discussions of any of the statements of that company?

A. Yes. We discussed Gold Bar a good deal at these meetings, and we used to go through the reports very carefully.

Q. Can you remember a meeting of January 12th, 1910, when there was a statement of the three banks presented and a discussion in regard to their condition?

A. Yes, I remember that meeting. I can't remember the particular date of the board meetings. Do the minutes show that I was present at that meeting?

Q. Yes.

A. That is the meeting when the statement of the three banks was presented?

Q. Yes.

A. Well, at all these meetings when these statements of the banks were presented, we always discussed the affairs and condition of the banks, discussed the loans and things of that kind. [823]

Q. It appears from the records in the case, the allegations of the complaint, that on September 21, 1909, Louis Enstrom surrendered up five shares of the capital stock. Do you remember anything about that transaction?



(Testimony of John L. McGinn.)

A. I never knew a thing about it until I saw it in the complaint in this case. It was never done on account of any action taken by the board of directors. I don't believe the board of directors ever heard anything about it, at least, I know that I have no recollection of it.

Q. What is your knowledge with regard to a similar transaction with regard to Oscar Enstrom's five shares?

A. The same thing. I don't remember of the matter ever coming up before the board of directors.

Q. It transpired from evidence read this morning that Mr. Parkin requested the corporation to take over his 10 shares of stock, and it was refused. But the allegations of the complaint set forth that on October 28, 1909, apparently 10 shares of stock were surrendered. Do you know anything about that transaction?

A. It was never done with the knowledge of the board of directors. No action was ever taken in the matter, except *except* the board of directors refused to take his stock. I think I know something about that transaction; that is, I afterwards learned it.

Q. Any transaction in which you participated?

A. No. And it is since these suits that I have learned about it. I had no personal knowledge about it.

Q. Then on the same day, October 28th, 1909, it appears that one share of stock held by Alex Cameron was surrendered up.

A. I never knew anything about it.

(Testimony of John L. McGinn.)

Q. On the same day two shares of stock held by Edith McCormick.

A. I never knew anything about that. [824]

Q. Do you know now whether she had paid for her stock?

A. No, I don't know whether she had paid for her stock. I think there were two stock notes that were never paid. What I would know would be from the evidence disclosed here. I wouldn't have any independent memory.

Q. On the same day, October 28th, it appears that J. W. McCormick surrendered 2 shares of stock to the corporation.

A. That was all done without the knowledge of the board of directors, as far as I know.

Q. Do you know anything about the transaction in which Francis H. Taylor on November 10, 1909, surrendered 5 shares of stock? A. No.

Q. Do you know anything about the transaction of McGowan & Clark surrendering their 5 shares of stock on November 23d?

A. I never knew anything about it until this suit was brought.

Q. Or Horton & Dunham, January 18, 1910, how they came to surrender their shares of stock?

A. No, sir.

Q. When did you cease to be a director?

A. The time we bought the bank, about the first of May, 1910.

Q. After that you attended no more directors' meetings?

(Testimony of John L. McGinn.)

A. No more directors' meetings, no, sir.

Q. Now, as to the condition of the bank April 12, 1910, I will ask you to state whether you believed the bank at that time to be solvent.

A. Absolutely. Yes, sir.

Q. I will ask you to state how you showed your confidence in that belief?

A. Well, I had about in the neighborhood of \$64,000 on deposit there at that time.

Q. Did you keep it on deposit there for some time afterwards?

A. I kept it on deposit there until we purchased the First [825] National Bank.

Q. And prior to that time had you considerable sums on deposit?

A. Yes, sir. I had more on deposit a short time before that.

Q. More than \$60,000?

A. Yes. I have had thirty-four and thirty-five thousand dollars more.

Q. Can you state from memory the names of those directors who had large sums on deposit at that time?

A. Dave Yarnell had about \$140,000, and the Jessons as I understood in the neighborhood of \$88,000.

Q. On April 12, 1910?

A. Yes, sir, about that time. That is my recollection of it.

Q. You were interested with Cook & Company in their mining operations? A. Yes, sir.

Q. What deposits had they? A. I don't know.

(Testimony of John L. McGinn.)

Q. Any large sum?

A. I couldn't tell. About April 12th, I don't know how much they were carrying at that time of the year. They had done work, been working all winter, and we hadn't contributed any more to that account than what was necessary to pay the expenses. No gold was coming in then, and I could not tell what that account would be.

Q. In your capacity as attorney for the bank you drew a great many securities for the bank for loans made to miners? A. Yes, sir.

Q. You did all of that work for the Fairbanks Banking Company, a partnership?

A. For the partnership Mr. Sullivan did a great deal of that work, and I did some of it. [826]

Q. And for the corporation afterwards?

A. Yes, sir.

Q. You learned in that way a great deal about the method of that bank in making loans?

A. And I was also attorney for the First National Bank.

Q. You knew in that way in regard to the method of the bank in loaning money to miners in developing and carrying on the mining industry? A. Yes.

Q. State briefly what was the declared practice of the bank with reference to making loans and pressing the collection of them promptly at maturity or otherwise; what the policy was.

A. It was the custom of the Fairbanks Banking Company, as well as the other banks, for instance if a man had a piece of ground out there and put down

(Testimony of John L. McGinn.)

a shaft and struck pay and he would want to get money, they would send a man out to investigate and see what he had. If they thought that the prospect or the showing that the ground had made was sufficient to warrant them in making a loan, they would do so, and they would carry that man according to the conditions that arose in each particular case. It was a matter that they had to exercise judgment about. You could not lay down any fixed rule in regard to when that note should be collected, or how long it should be allowed to run. The banks always undertook—that is true of all the banks—ample security at the time they made the loan. Whenever they advanced any money upon a piece of mining ground, they *thought* that ground would produce the money.

Q. How was that ascertained; from the prospects of the ground?

A. Take the Fairbanks Banking Company. One of the ideas in having directors from the various creeks, like Jesson on [827] Ester, Yarnell on Dome. I know this was talked of at the stockholders' meeting. Bob Sheppard on Fairbanks Creek, McMullen out on Goldstream, Charley Robinson was operating on Vault Creek at that time. One of the conditions was that if any miner from any of those creeks came in and required a loan, then they would telephone out to one of these directors and have them go down and examine the ground; and in case they didn't have a director upon the creek, then they would send a man out. Originally they had men employed

(Testimony of John L. McGinn.)

for that purpose. I have known Tom Carroll to be employed to pass on property on Dome Creek, and other men.

Q. The directors were chosen with a view to their knowledge of the mining industry? A. Yes, sir.

Q. And their competency to judge of the value of ground?

A. Yes, sir, that was taken into consideration.

Q. And they were frequently consulted by the bank's officers with reference to the collection of past due paper? A. Oh, yes.

Q. And the question of the advisability of what course and policy to pursue? A. Yes, sir.

Q. Now, from your knowledge of the situation, your experience as an attorney and as one of the directors, do you say the directors exercised good judgment in refusing to press claims immediately when they became due? A. I think so.

Q. State the circumstances surrounding the declaring of this dividend on April 12, 1910, by the Fairbanks Banking Company.

A. The statement of the three banks that was presented to the meeting of January 12 showed the undivided profits of the [828] institution at that time, and upon the 12th day of December the Washington-Alaska Bank declared a dividend of \$50,000.

Q. You said on the 12th of December?

A. On the 12th day of March, 1910, the Washington-Alaska Bank declared a dividend of \$50,000, and \$25,000 of that amount was placed in the undivided profit account of the Fairbanks Banking Company,



(Testimony of John L. McGinn.)

and \$25,000 was used in reduction of what they were carrying the capital stock of the Washington-Alaska Bank for. The statement of the banks showed that there was some \$34,000 at that time in the undivided profit account, and it was moved and seconded that a dividend be declared, and it was declared by the directors.

Q. At that time you believed that the bank had a surplus from which that dividend could be declared?

A. Yes, sir. Every man there believed that; believed that all the bad debts had been charged off at the expiration of the fiscal year, which was upon December 31, 1909, of the three banks. And we declared the dividend as of that date, as of the condition of the bank December 31, 1909.

Q. It was understood that that dividend would not be paid for several days thereafter?

A. Well, I don't know as I have any particular recollection as to that.

Q. You believed that the directors at that time were justified in declaring this dividend?

A. Yes, sir.

Mr. HEILIG.—That is all.

Cross-examination.

(By Mr. RIDER.)

Q. You say you declared that dividend on April 12th as of December 31st, 1909? A. Yes, sir.

Q. How could that be, Mr. McGinn? You didn't have the [829] dividend of the Washington-Alaska Bank on December 31, 1909.

A. As of the condition of the banks on that date.

(Testimony of John L. McGinn.)

The statement of the Washington-Alaska Bank December 31, 1909, showed that there was a surplus and undivided profits amounting to something like \$56,000, if I remember correctly, and the undivided profits of the Fairbanks Banking Company was some \$9,000, and it was based upon the condition of the banks as of date December 31, 1909.

Q. There is nothing in the minutes that shows that you declared that dividend as of December 31, 1909?

A. I couldn't tell you as to that; not that I recall.

Q. The minutes do show that, in order to enable the Fairbanks Banking Company to declare that dividend you had to set aside \$25,000 of the dividend that had been received from the Washington-Alaska Bank. A. Yes, there was \$25,000.

Q. How could you have declared it as of December 31st?

A. The Fairbanks Banking Company owned all of the stock of the Washington-Alaska Bank. The Washington-Alaska Bank upon the 31st day of December *were* entitled to declare a dividend of \$56,000 at that time, but the directors were not here. Under the laws of the State of Washington, I think the directors' meetings had to be held at that time in Seattle, or the stockholders' meetings were required to be held out there, and Mr. Parsons and others who were then directors were not present here. And, at the stockholders' meeting held in Seattle some time in February or March they elected a board of directors, and that board of directors qualified, and then they declared the dividend based upon the condition

(Testimony of John L. McGinn.)

of the bank as of December 31, 1909. Then the Fairbanks Banking Company, being the stockholder of the Washington-Alaska Bank, received that dividend, and they took [830] \$25,000 of it and put it in their undivided profit account, which account then showed the amount of about \$34,000.

Q. The Fairbanks Banking Company, as shown by its books, only had \$9,000 of surplus on December 31, 1909.

A. The entry was probably made on December 31st, but the money was there.

Q. What money are you talking about?

A. The \$25,000.

Q. I am talking about December 31st. A. Yes.

Q. On December 31st the books of the Fairbanks Banking Company only showed a surplus of about \$9,000. A. Yes, sir.

Q. Then the Fairbanks Banking Company could not have declared on December 31st this dividend?

A. The dividend is declared on that basis, and upon the condition of the Washington-Alaska Bank as of date December 31st.

Q. But the Washington-Alaska Bank had not declared any dividend on December 31st.

A. No. But it was the condition of that bank of that date that was taken into consideration.

Q. But you would have to declare your dividend in the Fairbanks Banking Company as to the conditions existing in it on December 31st?

A. But we added to the surplus account, as to its condition at that time, the \$25,000 received from the

(Testimony of John L. McGinn.)

Washington-Alaska Bank.

Q. Which you didn't get until April 12th.

A. Which we didn't get until April 12th.

Q. You stated that certain of these directors had certain large deposits in the Fairbanks Banking Company in December, 1907. How much did you say Yarnell had?

A. I was under the impression that Yarnell had in the [831] *in the* neighborhood of \$35,000. If he didn't then, he did immediately prior to that time.

Q. Don't you know that the books show that on December 11, 1907, Yarnell had \$15,858.86?

A. Well, I don't know anything about that, but I understood at that time, and I think you will find, that he had a larger deposit.

Q. And that on December 27th Mr. Yarnell's deposit was reduced to \$10,858.86? A. I don't know.

Q. How much did you understand Mr. Ryan had, as you testified?

A. I understood he had about \$25,000 on deposit at the time the bank suspended.

Q. Don't you know that the books show that on December 10th Ryan had \$9,769.86, and that that continued until December 23d when his deposit was \$9,707.86?

A. No, I don't know about that. I know that when the bank suspended it was general talk around here that Ryan had about \$25,000 on deposit, Dan Ryan.

Q. You are basing your testimony then upon the general talk that went around?

A. I got it principally from the officers of the bank.

(Testimony of John L. McGinn.)

I know it was talked about.

Q. How much of a deposit did you say Mr. Jesson had at that time, December, 1907?

A. I didn't state that.

Q. Didn't you state how much Jesson Brothers had?     A. No, sir.

Q. Did you state how much Robinson had.

A. No, sir.

Q. You say that the action of the board of directors taken on September 13, 1909, in the matter of the purchase of the [832] Washington-Alaska Bank stock was ratified on September 14th?

A. Yes, sir.

Q. At which time you were a director, and were present?     A. Yes, sir.

Q. The record of that ratification is: The action of the board of directors regarding the purchase of the Washington-Alaska Bank as had at its meeting of September 13, 1909, was confirmed. Did you note any objection to that confirmation on these minutes?

A. I see there is no opposition, but I opposed it at the time.

Q. In the matter of the Wood and Hill stock, and the matter of the accrued interest payment, you say that that was thoroughly understood from the beginning?     A. Yes, sir.

Q. That Mr. Hill and Mr. Wood were to be entitled to take cash for their share of the partnership profits?     A. Yes, sir.

Q. And that they might have until July, 1908, in which to do that?     A. Yes, sir.

(Testimony of John L. McGinn.)

Q. That was always understood from the very beginning, was it?

A. Yes, sir. That was the understanding.

Q. And there was never any understanding that they were to take stock?

A. No, I don't mean that. I mean they had a right to either take stock or money.

Q. They had that election. It was always understood that they had that election?

A. I think it went a little bit further than that.

Q. How much further?

A. I think that it was understood that they had the right up to that time, even if they had taken stock.  
[833]

Q. Up to what time?

A. Up to July 1st to take money, even if they had signed their names to the subscription.

Q. It was always understood that they had the right until July 1, 1908, to take cash instead of stock?

A. Yes, sir.

Q. That was always the understanding.

A. That was my understanding of the matter.

Q. When Wood signed this contract, you say he objected to signing it because it contained the positive clause that he should take stock.      A. Yes, sir.

Q. Wood then *know* that clause was in there when he signed it?      A. Yes, sir.

Q. Did he also know that the clause respecting interest was omitted?

A. I can't recollect about that now. I think that matter was taken up there, too. My recollection is



(Testimony of John L. McGinn.)

that at that time that had been credited to the partnership, so that was disposed of in that way.

Q. That is, prior to the time Wood signed?

A. Yes, sir, prior to the time Wood signed.

Q. But it was known to Wood that it was not in the contract.      A. I can't recollect that.

Q. Do you know when it became discovered by the directors and officers that that clause was not in the contract?      A. I can't recollect just now.

Q. Do you remember whether they knew it or not when they signed the contract?

A. I am satisfied that they didn't know it at that time [834]

Q. That they didn't know it at the time they signed the contract?

A. No. If they had known it they would have called it to my attention.

Q. Mr. McGinn, you testified respecting the early organization of the Fairbanks Banking Company, a corporation, at Valdez in the trial of the United States vs. E. T. Barnette and L. E. Wing, numbers 334 and 337, did you not?      A. Yes, sir.

Q. And at that time the history of the steps taken in the matter of that incorporation were gone over in your testimony.      A. Yes, sir, I think so.

Q. You were examined as a witness in behalf of Barnette at that trial.

A. I think on behalf of the Government.

Q. You were examined by Mr. Fink for the defendant.

A. Well, I appeared both for the Government and for the defence.

(Testimony of John L. McGinn.)

Q. Did you not at that time, when on examination by Mr. Fink and after you had related the historical circumstances surrounding the organization of the bank, give this testimony (Reads):

“Q. It appears from the minutes that have been introduced in evidence here that a resolution was passed on the 12th day of March, 1908, wherein the issue of 440 shares to Barnette, 220 shares to Hill and 220 shares to Wood was authorized. Do you know whether that resolution was in fact passed on the 12th day of March or some time in January?

A. That was an agreement made in January. Let me see.

Q. Before the subscription had been cut down, was it?

A. That was done before the subscription list was cut down. I don't remember just how that arose, but I think it was in this way: That the committee had made a report to the proposed depositors as [835] to the assets of the corporation, and they had classified these assets in a classification, and I think that Barnette, Hill and Wood were entitled to something like 880 shares of stock. And the stockholders, I think, refused to take some of the notes, which cut it down to 520 shares of stock. That is my recollection of it.

Q. Was that the deal between these subscribers, Barnette, Hill and Wood, that is, in a general way? I don't want to lead you, but was it the plan that they were to take stock for the assets which they turned over?

(Testimony of John L. McGinn.)

A. Yes. The contract so provided and the minutes so recite.

Q. That was the original plan?      A. Yes, sir. ”  
Did you give such testimony?

A. Yes, sir. I suppose I did. I think that is about correct.

Mr. RIDER.—That is all.

Mr. HEILIG.—That is all.

Mr. McGINN.—I desire to introduce the petition of E. T. Barnette and Isabelle Barnette in case number 1597; then the order of Judge Overfield made upon the 14th day of March, 1911, upon that petition; then the application of the receivers for instructions; then the instructions given by Judge Overfield upon that application.

The COURT.—They may be considered as offered in evidence, without being read at length, I suppose.

Mr. RIDER.—That is satisfactory to me; but, of course, it is all received subject to my objection.

Mr. McGINN.—I desire to introduce these files.

The COURT.—They may be admitted, subject to the objection, and to a motion to strike if they are not connected with other evidence. [836]

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[Title of Court and Cause.]

[**Petition of E. T. Barnette et ux. Directing Receiver  
etc. to Accept and Hold in Trust Deed, etc.**]

To the Honorable PETER D. OVERFIELD, Judge  
of the Above-named Court.

The petition of the undersigned respectfully  
shows:

That the said E. T. Barnette is, and for some time last past has been, the president of the Washington-Alaska Bank, a corporation, heretofore doing a general banking business at the town of Fairbanks, Alaska, duly organized under the laws of the State of Nevada; that the said Washington-Alaska Bank did become involved in financial difficulties and was compelled, as a result thereof, to close its doors and suspend its general banking business on the 3d day of January, 1911, and at such time was and is now unable to pay its depositors upon demand in full, and the affairs and property of the said bank are now in the hands of F. W. Hawkins and E. H. Mack, as receivers duly appointed by orders of this honorable Court made in the above-entitled action.

That the said E. T. Barnette desires to become surety to the depositors of the said Washington-Alaska Bank and is possessed of certain real estate and lands, particularly hereinafter set forth and described.

That the said Isabelle Barnette, is the wife of the said E. T. Barnette, and in consideration of the love and affection in which she holds her said husband, desires to aid her said husband in making payment to the said depositors of the said Washington-Alaska [837] Bank and is possessed of certain real estate and lands, particularly hereinafter set forth and described.

That the said E. T. Barnette and the said Isabelle Barnette, his wife, each desire to grant and convey unto the aforesaid receivers of the said Washington-

Alaska Bank the said real estate and lands to be held in trust by the said receivers, their successors or successor, as security for payment to the said depositors of all sums of money which are now due, owing and payable to said depositors, and to that end and for that purpose do herewith deliver into this court certain trust deeds of the said real estate and lands to be held by said receivers, their successors or successor, as security for payment, in full, to the said depositors.

The said real estate and lands, the property of the said E. T. Barnette, which he desires the said receivers to so hold in trust, consist of the following, to wit:

That certain rural property denominated Canada del Tobacco, situated on the right bank of the Santiago River, in the Municipality and District of Santiago, Ixcuinlta, Territory of Tepic, which has a superficial extension of 7577 hectares, 11 aras and 70 centaras, there being comprehended in this area 285 hectares, 25 aras and 90 centaras, being the superficial area of the Island called "La Culebra," which formed part of the Hacienda de Navarrete, but which was separated from the same and incorporated into the Canada del Tobacco by reason of the change in the course of the Santiago River by a strong flood which it suffered that the lines of the Canada del Tobacco are to the east; the Hacienda San Lorenzo, belonging to the Compania Agricola Tepiquena, a corporation, this line beginning from a monument called "La Libertad," which before

was called the "Fig Tree of Aunt Jacinto," to a monument of the Estuary of the Bridge; to the North with the same Hacienda of San Lorenzo from the Estuary of the Bridge to the monument "del Bule," to the east from this monument to that of "La Paloma," with the aforesaid Hacienda of San Lorenzo; and from the monument lastly referred to to the River Santiago, with the property denominated "Las Palomas," owned by Don Eduardo Lartines Ochoa, and toward the southwest of the Canada del Tobacco is situated the Island named "Los Caballos, and that although this island appears on the plan of said Hacienda, it is not embraced in the sale agreed upon because it belongs to Señor Don Manuel Lanzagorta.

The landed property alienated is composed of cultivated lands, grazing lands and forests. It has eight fields fenced with wire. The residence is situated in the Island of Culebra, constructed of stones with roof of tile; a warehouse of palm twigs, roof of thatch, in bad condition; stable with roof of thatch. On the Canada del Tobacco there is a storehouse of wooden walls with roof of tile and a warehouse of cedar wood with roof of tile, all being comprehended in this sale, as also the waters, the mountains, and [838] whatevermore belongs or can belong of deed or right to the said landed property, situate in the Municipality and District of Santiago, Ixcuinlta, Territory of Tepic, Republic of Mexico; also

An undivided one-half interest in lot five (5) in block four (4) in the incorporated town of Fair-



banks, Alaska, according to the official survey of Fairbanks, Townsite made by L. S. Robe in the year 1909; also

That certain lot numbered four (4) in block seventeen (17) in the incorporated town of Fairbanks, Alaska, according to the official survey of Fairbanks, Townsite made by L. S. Robe, in the year 1909; also

An undivided one-third interest of, in and to that certain Dome Group or Association placer mining claim, situate on Dome Creek, in the Fairbanks Mining and Recording District, Alaska; also

An undivided three-fourths interest of, in and to the Isabelle Group or Association placer mining claim, situate on Vault Creek, in the Fairbanks Mining and Recording District, Alaska.

The said real estate and lands, the property of the said Isabelle Barnette, which she desires the said receivers to so hold in trust consist of the following, to wit:

All that certain lot numbered five (5) in block fourteen (14), in the incorporated town of Fairbanks, Alaska, according to the official survey of Fairbanks Townsite made by L. S. Robe in the year 1909; also

That portion of lot numbered five (5) in block thirty-eight (38) in the incorporated town of Fairbanks, Alaska, beginning at the northeast corner of said lot on Second Avenue; thence extending in a westerly direction along said Second Avenue boundary line of said lot a distance of fifty feet; thence extending in a southerly direction parallel with the easterly boundary line of said lot a distance of about

one hundred and forty feet to Third Avenue; thence extending along the Third Avenue boundary line of said lot in an easterly direction a distance of about forty-six feet to the southeast corner of said lot; thence extending along the easterly boundary line of said lot in a northerly direction a distance of about one hundred and forty feet to the northeast corner of said lot, the point of beginning.

Your petitioners, the said E. T. Barnette and the said Isabelle Barnette, his wife, respectfully represent:

That they desire the said receivers, their successors or successor, shall hold each and all the aforesaid lands and real estate in trust as security for payment to the said depositors of all moneys that shall be found due, owing and payable to the said depositors, after the affairs of the said Washington-Alaska Bank shall have been wound up and the assets of said bank realized upon and paid over to the proper persons, such trusteeship to continue until the 18th day of November, 1914, provided the said E. T. Barnette and the said Isabelle Barnette, his wife, shall have failed to pay [839] to the said depositors any deficit that may be found to exist after the winding up of the affairs of the said bank as aforesaid. It being the intent, desire and express wish of the said petitioners and each of them and they and each of them do hereby promise and agree to pay the said depositors in full, not later than the said 18th day of November, 1914.

And your petitioners, and each of them, further desire that the rents, issues and profits of the said

real estate and lands situate in the said Fairbanks Precinct, shall be collected by the said receivers, their successors or successor, and after deducting the reasonable charge for collecting same, and taxes and insurance and other legitimate expenses, shall be paid *pro rata* to the said depositors at such time and in such manner as this honorable Court may hereafter direct.

And your petitioners, and each of them, desire that if at any time your said petitioners, and each of them, and the said receivers, their successors or successor shall deem it more advantageous to sell and dispose of, than to hold and retain, any of the properties situate in the said Fairbanks Precinct, then the same may be sold and the proceeds derived therefrom shall be delivered over to the said receivers, their successors or successor, to be by them or him paid to the depositors in the way and manner hereinbefore suggested for the payment of the rents, issues and profits to the said depositors.

And your petitioners, and each of them, further represent, agree and promise that they shall and will pay to the said depositors interest on each and all deposits at the rate of six per cent per annum from the 4th day of January, 1911, until paid.

And your petitioners, and each of them further represent and say:

That all real estate and lands hereinbefore described and [840] situate in the District of Alaska, are free and clear of incumbrances.

And the said E. T. Barnette does hereby represent and say: That the said property situate in the Re-

public of Mexico is of record in the name of the said E. T. Barnette, and is not subject to any lien, mortgage or other incumbrance, contract or agreement, save and except that certain agreement made between the said E. T. Barnette and one George Edgar Ward and one W. D. Begg, on the 18th day of November, 1909, a copy of which agreement is filed herewith.

And finally your petitioners are informed and believe, and therefore say: That certain legal proceedings are contemplated and about to be commenced against your petitioners in this court, which said legal proceedings would subject the real estate and lands, situate in the District of Alaska, and belonging to your petitioners, to the orders and process of the Court and prevent your petitioners from in any way dealing in or with or disposing thereof, and all of which said real estate and lands are mentioned in this petition; and which said legal proceedings would entail great and unnecessary expense upon your petitioners and that such legal proceedings relate directly to the connection of the said depositors with the said Washington-Alaska Bank, and that your petitioners desire to prevent the commencement of such legal proceedings and the incurring of the said unnecessary and great expense, by surrendering all the real estate and lands of the said petitioners to the said receivers, their successors or successor, in trust, and your petitioners say that it is the desire and intention of your petitioners, and each of them that all said depositors in said Washington-Alaska Bank shall be paid in full their respective

deposits, together with interest thereon at the rate of six per cent per annum from the 4th day of January, 1911, until paid and not later than the [841] 18th day of November, 1914, and for that purpose and to that end your petitioners, and each of them, come into this court and pray;

1. That an order be made by this honorable Court, directing the receivers, their successors or successor, to accept and hold in trust the deeds to the real estate and lands in this petition described and set forth, for the time and in the manner as above recited.

2. That said order shall also direct the said receivers, their successors or successor, to collect the rents, issues and profits derived from the real estate and lands situate in the Fairbanks Precinct, Alaska, and disburse and pay same in keeping with the suggestion and request contained in the above petition.

3. That said order direct that if the depositors of the said Washington-Alaska Bank be not paid in full, including interest upon their said deposits at the rate of six per cent per annum, by the 18th day of November, 1914, then the said receivers, their successors or successor, shall sell and dispose of all said real estate and lands, for the best price obtainable, and the proceeds derived from such sales be applied, first, in payment of said depositors' accounts, together with interest, and the residue, if any, be delivered unto the petitioners, E. T. Barnette and Isabelle Barnette, his wife.

4. That this honorable Court make such further order, not inconsistent with the matters contained

in this petition, as may to this honorable Court seem meet in the premises.

E. T. BARNETTE,  
ISABELLE BARNETTE,  
Petitioners. [842]

United States of America,  
District of Alaska,  
Fairbanks Precinct.

E. T. Barnette and Isabelle Barnette, being first duly sworn, each for himself and herself, upon oath says:

That he and she is one of the petitioners named in and whose name is subscribed to the within and foregoing petition; that he and she has read same, knows contents thereof, and the same is true.

E. T. BARNETTE.  
ISABELLE BARNETTE.

Subscribed and sworn to before me this 13th day of March, 1911.

[Seal] LEROY TOZIER,  
A Notary Public in and for the District of Alaska.

[Endorsed]: No. 1597. District Court, District of Alaska, Fourth Division. Tanana Valley Railroad Co., a Corporation, and John Zug, Plaintiffs, and Washington-Alaska Bank, F. W. Hawkins and E. H. Mack, Defendants. Petition of E. T. Barnette and Isabelle Barnette, His Wife. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 13, 1911. C. C. Page, Clerk. [843]



[Title of Court and Cause.]

**Order [Directing Receiver to Turn Over Certain  
Papers to Receiver].**

Now, on this day this cause came on for hearing upon the petition of E. T. Barnette and Isabelle Barnette, that an order issue from this Court directing the receivers of the Washington-Alaska Bank to accept and hold in trust certain real estate and lands belonging to the petitioners and described in said petition, for certain purposes therein set forth. And the Court having considered such petition and it appearing to the Court that it is a matter which should originate with the receiver and the Court being fully advised in the premises:

Now, therefore, IT IS HEREBY ORDERED, that said petition of E. T. Barnette and Isabelle Barnette, his wife, and papers appertaining thereto, be turned over to the receivers of the Washington-Alaska Bank for their consideration.

Done in open court at Fairbanks, Alaska, this 14th day of March, 1911.

PETER D. OVERFIELD,  
District Judge.

Entered in Court Journal No. 10, page 791. [844]

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[Title of Court and Cause.]

**Application of Receivers for Instructions.**

The undersigned, Receivers of the Court, herein respectfully ask for instructions in the matter following, viz.:

On the 18th day of March, 1911, E. T. Barnette and Isabelle Barnette, his wife, delivered to us two trust deeds properly executed, wherein we are named as trustees, the one conveying a tract of land in the District of Santiago, Ixcuinlta, Territory of Tepic, Republic of Mexico, said to contain eighteen thousand seven hundred and twenty-three (18,723) acres, more or less, by the English measurement, and the other a number of lots with the improvements thereon, situate in the City of Fairbanks, and an undivided one-third ( $\frac{1}{3}$ ) interest in the Dome Association placer claim on Dome Creek; also an undivided three-fourths ( $\frac{3}{4}$ ) interest in and to the Isabelle Association placer claim on Vault Creek, such lots and mining ground being in the Fairbanks Recording District, Territory of Alaska, said deeds being in trust, on the terms and conditions therein specified, the object and purpose being as therein expressed to secure and ultimately pay the depositors and owners of unpaid drafts of the defendant bank, any balance that may remain, after the property and assets of said bank [845] are collected and applied in payment thereof.

As to the real property described in the trust deed of the lands in the Republic of Mexico, we have no knowledge or information as to the condition of the title of the grantors, nor as to the value and availability thereof as security, other or different from that of the public at large. The real property contained in the other deed and situate in Fairbanks and vicinity is of considerable value, the title is clear so far as we know, and there are no incumbrances

of record against it, except the city taxes on one of the lots; The rents and issues of the city lots amount to a considerable sum—as much as Six Hundred and Fifty Dollars (\$650) per month net, as we are informed. The mining claims are of some value and might produce a revenue during the coming mining season, but to what amount we are unable to say.

We are of the opinion that if these deeds are accepted, it will be impracticable to proceed as contemplated, to fix a liability against E. T. Barnette one of the grantors, in favor of the creditors of said bank, by action in the court here. So far as we now know, the property conveyed to us as trustees, located at Fairbanks, and on the nearby creeks, is all the property owned by said E. T. Barnette in Alaska, that would be subject to seizure on a judgment against him in this court. The deed contains some valuable real estate that is the separate property of Isabelle Barnette.

In view of the premises, we ask for the instructions and direction of the Court as to whether we shall accept the said trust deeds and undertake the duties and responsibilities entailed upon us thereby, or return the same to the grantors therein. The said trust deeds are submitted herewith.

Dated at Fairbanks, Alaska, this 20 day of March, 1911.

F. W. HAWKINS,  
E. H. MACK,

Receivers of Washington-Alaska Bank.

Approved:

LOUIS K. PRATT,

Attorney for the Receivers. [846]

[Endorsed]: In the District Court for the Territory of Alaska, Fourth Division. No. 1597. Tanana Valley Railroad Company, a Corporation, and John Zug, Plaintiffs, vs. Washington-Alaska Bank, a Corporation, Defendant. Application of Receivers for Instructions in Re Trust Deeds of E. T. Barnette and Wife. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 30, 1911. C. C. Page, Clerk. [847]

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[Title of Court and Cause.]

**[[Order that Receiver may Accept Trust Deed  
Executed by E. T. Barnette et ux., etc.]**

To F. W. Hawkins and E. H. Mack, Receivers for the  
Washington-Alaska Bank:

Your application, dated March 20, 1911, with reference to a certain trust deed, dated March 18, 1911, signed by E. T. Barnette and Isabelle Barnette, his wife, deposited with you, as receivers in the above-entitled cause, duly considered and it is

ORDERED, that you, as such receivers, may accept the trust deed so executed by E. T. Barnette and Isabelle Barnette, his wife, to certain property owned by them in Alaska, and Mexico, and that you take the proper and necessary steps and action to secure the same and the proceeds and issues therefrom, to the payment of the liabilities of the Washington-Alaska Bank, in connection with your duties as receivers in the above-entitled action.

Dated at Fairbanks, Alaska, this 29th day of March, 1911.

PETER D. OVERFIELD,

District Judge.

Entered in Court Journal No. 11, page 17. [848]

[Endorsed]: No. 1597. In the District Court for the Territory of Alaska, Fourth Division. Tanana Valley Railroad Co., a Corporation, and John Zug, Plaintiffs, vs. Washington-Alaska Bank, a Corporation, Defendant. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 29, 1911. C. C. Page, Clerk. By G. F. Gates, Deputy.

**[Testimony of Sidney Stewart, for Defendants.]**

SIDNEY STEWART, heretofore sworn, called as a witness for defendants, testified as follows, to wit:

Direct Evidence.

(By Mr. McGINN.)

Q. How much has the receiver received as rents and royalties from the property that was turned over to him by E. T. Barnette and Isabelle Barnette in that trust deed? A. The gross receipts?

Q. Yes, the gross receipts.

A. Well, sir, I can't give you that without going over the books. I credit up and charge to separate accounts and carry along the balances.

Q. What are the net receipts at the present time?

A. I have not posted this month. The balance I have here is of April 30, 1914, showing a net balance in the Barnette Trust Fund of \$30,905.65.

Q. What will this month's income be?

A. It will probably come to \$450. [849]

(Testimony of Sidney Stewart.)

Q. That is the net?

A. No. There will be some little charges, a matter of \$10 or \$20, something like that.

Q. What property does that rent principally come from?

A. The rentals are from the city property here, the Barnette Building.

Q. That is the entire city property, including the Barnette Building.

A. Yes, sir; the whole property here.

Q. Do you receive greater rents in the summer months than in the winter months?

A. Yes. In the summer-time there has been one or two extra offices rented there, for a short time.

Q. What rent do you receive from the Barnette residence?

A. That is not rented at \$30 a month.

Q. What other property is there, town property?

A. There is a half interest in this place on First Avenue, known as "The Fish Market."

Q. Is that right above the Nordale Hotel?

A. I can— Yes, right next to the Nordale Hotel.

Q. What besides that?

A. I can't tell without looking up the books.

Q. What is the size of that lot?

A. It is specified in that trust deed to the town property.

Q. What does that pay?

A. There is no income from that.

Q. Can you tell how much gold and gold-dust was



(Testimony of Sidney Stewart.)

received by the receiver from the Dome Creek property last year?

A. Well, that is in the receivership books in the office. I haven't those books here.

Mr. McGINN.—We want that, and also what was received from the [850] Vault Creek property.

A. Yes, sir.

Q. You can furnish us with that to-morrow morning? A. Yes, sir.

Mr. McGINN.—While he is getting that, we will read this deposition.

Mr. RIDER.—Before you go (to Mr. Stewart.)

Q. The rents of this property, which have been inquired about, include the Dome Creek property and the Vault Creek property. They are all included in this item of \$30,905?

A. That includes the whole receipts under the trust deed, both city property and creek property.

Q. Then this item of Dome Creek, and of Vault Creek property, wouldn't be an additional receipt to the \$30,905 which you have already given us?

A. No, sir.

Mr. McGINN.—We desire at this time to read in evidence the deposition of T. F. Ryan (Reads same): [851]

Monday, March 16, 1914, 10 o'clock A. M.

Continuation of the taking of depositions pursuant to adjournment, counsel for all parties being present as at former hearing.

**[Deposition of T. F. Ryan, for Defendants.]**

T. F. RYAN, produced as a witness in behalf of defendants, being first duly cautioned and sworn, testified as follows:

Q. (Mr. McGINN.) What is your name?

A. T. F. Ryan.

Q. Where do you reside, Mr. Ryan?

A. Seattle.

Q. How long have you resided in Seattle?

A. Twelve years.

Q. What is your business?

A. I am in the fruit business.

Q. How long have you been engaged in that business? A. Since August, 1889.

Q. In the city of Seattle?

A. No, Spokane and Seattle and various other places.

Q. Have you ever been in the Republic of Mexico?

A. I have.

Mr. McGINN.—I suppose, Mr. Rider, that we can use the description in the trust deed in referring to the property in the Republic of Mexico?

Mr. Rider.—It being agreed that the property described therein is the property described in the trust deed from E. T. Barnette to the former receivers in this case.

Q. (Mr. McGINN.) I will ask you to examine this document marked trust deed, which describes certain property situated in the Republic of Mexico and I will ask you to [852] state whether or not you are familiar with that property?

(Deposition of T. F. Ryan.)

Mr. RIDER.—I would like to ask you one question first, Mr. McGinn; do I understand that it is your purpose by this witness to prove the value of the property described in the trust deed?

Mr. McGINN.—Yes.

Mr. RIDER.—Then the plaintiff objects to the introduction of any testimony respecting the value of said property, for the reason that the same is irrelevant and immaterial, and I ask that this objection be noted to the entire testimony of this witness.

Mr. McGINN.—It is understood that the objection will go to all of this evidence—that is agreed between us.

Mr. RIDER.—You understand that I am making the objection to each question.

Mr. McGINN.—I understand that it runs through all of the evidence.

A. (By the WITNESS.) Personally, I have never been on this property, but my managers have reported to me on it and I sent a second manager to confirm his report and I have been more or less familiar with the property ever since.

Q. (Mr. McGINN.) Are you acquainted with the property adjoining it in that vicinity?

A. I have large holdings adjoining it in that vicinity.

Mr. RIDER.—Let me supplement my objection. I now further object, in view of the answer of the witness as given respecting his acquaintance with this property, to his testimony as to the value of the same for the reason that it is incompetent. [853]

(Deposition of T. F. Ryan.)

Q. (Mr. McGINN.) I will ask you to state whether you are acquainted with the nature of this particular ground? A. Yes, sir.

Q. I believe you stated that you obtained that information from the reports of men that you have sent there?

A. The same men that acquired all my holdings, and I have taken their reports for it, because they know more about the tropical lands than I do. They are my confidential men that make me reports.

Q. You have property adjoining it?

A. We have banana plantations adjoining that, within eighteen miles of it.

Q. I will ask you to state whether or not in your opinion you are acquainted with the value of this property described in this trust deed, and were so acquainted in the years 1910 and 1911?

Mr. RIDER.—That is objected to as incompetent, irrelevant and immaterial, and for the reason that the witness has disclosed that the only acquaintance he has with the property is through the reports of others, and his answers would, therefore, be based clearly upon hearsay testimony.

A. (By the WITNESS.) I am.

Q. (Mr. McGINN.) I will ask you to state what, in your opinion, was the value of that property during the time I mentioned.

Mr. RIDER.—That objection as incompetent is understood to go to all this and I do not have to repeat it.

Mr. McGINN.—It is understood that the objection

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of incompetent goes to the entire testimony of this witness. [854]

A. (By the witness.) I should say, in 1910 and 1911 that property should be worth half a million dollars.

Q. What do you place that valuation on?

A. It is a very peculiarly rich piece of land of which probably the largest body is the best bottom land in that vicinity; very productive. I have had fruit from there, the nicest fruit I have ever shipped from the west coast—bananas.—I place the value on what it is capable of producing and what revenue it was bringing on the cleared land at the time. That land would bring four dollars an acre for corn alone, which is the cheapest product in rent that they could grow on it.

Q. Four dollars gold?

A. Four dollars gold per acre.

Q. Was there any of the land in corn?

A. Yes, there is land in corn and tobacco both, there has been right up to the last year, in fact there is some now.

Q. And what would the tobacco land produce per acre?

A. I am unable to answer that question for the reason that I am not familiar with tobacco—but a great deal more than corn. The way that land has been handled down there, it was leased to the natives under direct management in corn, and I know that land ought to turn off twenty-five or thirty dollars

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an acre net per year, I would say, very conservatively.

Q. And how about bananas?

A. The Barnette management planted about 750 acres to bananas on that plantation.

Q. And under conditions as they existed in 1910 and 1911 [855] what would that produce, that is the net return per acre?

A. Well, we are allowing the plantations thirty cents a bunch for fruit, and they produce about three hundred bunches to the acre, and it would cost not to exceed twenty dollars an acre for cultivation—about seventy dollars an acre net on bananas.

Q. That is it would produce annually?

A. Yearly, that is on the basis of cost f. o. b. to any of the Central American Republics, not considering any values of any advanced price for the fruit on account of the fact that it is two thousand miles nearer to the Pacific Coast markets, but putting the fruit on the basis of the tropical fruit of Guatemala and Nicaragua and other republics down there.

Q. That is what it would produce to the producer on the plantation?

A. That is what it would produce to the producer without going into the market with his own fruit. ←